United States Court of Appeals

for the Second Circuit

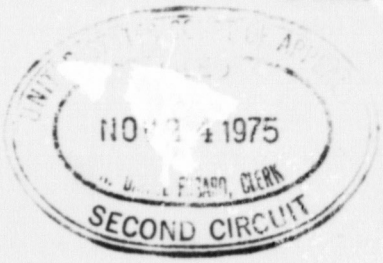
APPENDIX

ORIGINAL

75-7456

United States Court of Appeals

For the Second Circuit.



JULIO EVANS,

Plaintiff-Appellant,

-against-

CALMAR STEAMSHIP CO.,

Defendant-Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

Joint Appendix

PAUL C. MATTHEWS
Attorney for Plaintiff-Appellant
11 Broadway
New York, New York 10004
Tel. 344-1936

FULLER, LAWTON & MOYLES
Attorneys for Defendant-Appellee
17 Battery Place
New York, N.Y. 10004
Tel. 344-6100

Dick Bailey Printers — Tel. (212) 447-5358

TABLE OF CONTENTS

	Page
Docket Entries	A-1
Order Granting Remittitur	A-2
Motion for Judgment or New Trial	A-4
Memorandum in Support of Motion for Judgment or a New Trial	A-7
Letter from Plaintiff's Attorney to Court dated January 20, 1975	A-12
Letter from Court to Plaintiff's Attorney dated January 22, 1975	A-13
Letter from Court to Plaintiff's Attorney dated April 5, 1975	A-14
Judgment	A-15
Notice of Appeal	A-16
Medical Records	A-17
Excerpts taken April 23, April 24, 1975	A-31
Defendant's Exhibit 20	A-52
Defendant's Exhibit 21	A-54
Defendant's Exhibit 22	A-65
Excerpts from Transcript - Colloquy	13-18
Colloquy	22-25
Evans - Direct	37-70
Cross	70-86
Dr. Irving Mauer, direct	87-105
cross	106-120
Julio Evans, Cross	120-132
Dr. Rizzo, direct	135-146
cross	147-154
Court's Charge	158-175

JUDGE CANNELLA

70 CIVIL 4435

DATE	PROCEEDINGS	Date Judgm
Oct 13-70	Filed Complaint. Is sued Summons.	$15
. 9,70	Filed summons with marshal's ret. Served Calmar Steamship Co. by SERVICE NOT COMPLETED.	
20 71	Filed Deft's ANSWER to the complaint.	FL
6 72	Filed Pltff's interrogs to be answered by Deft.	
5-73	Filed memo endorsed on complaint dated Oct. 13,1970,all pre trial discovery is to be completed by Oct. 1st,1973.Pre trial memoranda and a joint pre trial order are to be filed by Oct. 22,1973.A mag. to be designated by Mag. Jacobs shall supervise preparation of the joint pre trial order and shall resolve any disputes. Trial to be held on 24 hrs. notice on Nov. 7,1973 or thereafter,etc. So ordered,Motley,J.m/n	
t.2-73	Filed deft's pre-trial memorandum.	
31-73	Filed pre-trial order. MOTLEY, J.	
31-73	Filed deft's pre-trial memorandum.	
JN 14-74	Case reassigned to Judge Bauman.	
12-74	Filed transcript of record of proceedings, dated MAY 20-1974	
2-74	Before SOLOMON, J. Jury trial begun.	
t. 3-74	trial cont'd and concluded. Jury verdict for pltff.-general damages at $55,000. Special damages at $5,000.	
t.16-74	Filed deft's motion for judgement notwithstanding the verdict or new trial.	
n. 16-75	Filed Order granting remittitur- if the pltff. on or before 2-3-75 shall serve upon counsel for the deft. and file in this case a remittitur of $20,000. on the verdict and judgment of $60,000., deft's motions for a new trial and for a judgment notwithstanding the verdict shall both be denied and an amended judgment for $40 000. plus costs may be entered against the deft. If the remittitur is not so served and filed on or before 2-3-75, deft's motion for a new trial shall be granted. SOLOMON, J. (m/n)	
r. 16-75	Filed pltff's pre-trial memorandum	
. 16-75	Filed memorandum in opposition to deft's motion for Judgment N.O.V. or a new trial	
r.16-75	Filed memorandum in support of deft's motion for Judgment N.O.V. or a new trial	
r. 16-75	Filed transcript of record of proceedings dated 10-2-74	
r. 21-75	Filed Order- that a new trial by jury limited to the issue of the damages to be awarded to pltff- to be presided by Judge Cannella, and he shall also determine whether pltff. is entitled to maintenance, and, if so, the amount th SOLOMON, J.	
r. 18-75	Case reassigned to Judge Cannella,mailed notice..	
r. 23-75	Before CANNELLA, J. second Jury trial begun.	
r. 24-75	trial cont'd and concluded. Deft. consents to the remittitur by Judge Solomon of $ 40,000. Judgment to be entered in favor of pltff. against the deft.	
14-75 √	Filed Judgment # 75,433-- ordered that pltff. have judgment against the deft. in the sum of $40,000. plus costs. Clerk (m/n)	
ne 6-75	Filed pltff's notice of appeal from judgment entered 5-14-75. Copy to: Fuller, Lawton & Moyles, Esqs. Ent. 6-9-75.	

B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JULIO EVANS,

Plaintiff,

vs.

CALMAR STEAMSHIP CO.,

Defendant.

70 Civ. 4435 (GS)

ORDER GRANTING REMITTITUR

The jury returned a verdict in favor of the plaintiff for $5,000.00 special damages for lost wages and $55,000.00 for general damages.

The defendant thereafter filed timely motions for a judgment notwithstanding the verdict, for a new trial or, in the alternative, for a reduction of the size of the judgment because it is grossly excessive.

Defendant asserts that the evidence failed to establish either negligence or unseaworthiness. Plaintiff's proof did not convince me, but viewing the evidence and the inferences that may be drawn from that evidence in the light most favorable to the plaintiff, I cannot say that it was insufficient to support a finding of liability.

I also believe that the evidence on the relationship between the accident and the injuries which the plaintiff says he suffered appears to be minimal, but here again under the applicable rules I cannot say it was insufficient to establish the required causal connection between the fall and the injuries.

Nevertheless, I do find that the size of the verdict was unreasonably high and grossly excessive. For me to refuse to reduce this verdict would be a manifest abuse of discretion. I cannot permit such an award to stand

I have carefully considered all the evidence touching on damages, and I believe the verdict of the jury was excessive to the extent of $20,000.00. I am convinced that a judgment in favor of the plaintiff for $40,000.00 is the maximum that could be justified under the most favorable interpretation of the facts.

Therefore, if the plaintiff on or before Monday, February 3, 1975, shall serve upon counsel for the defendant and file in this case a remittitur of $20,000.00 on the verdict and judgment of $60,000.00, defendant's motions for a new trial and for a judgment notwithstanding the verdict shall both be denied and an amended judgment for $40,000.00 plus costs may be entered against the defendant. If the remittitur is not so served and filed on or before February 3, 1975, defendant's motion for a new trial shall be granted.

Dated this 14th day of January, 1975.

Lynn R. Hanson

United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

JULIO EVANS, :

Plaintiff, : 70 Civ. 4425
Honorable Gus Solomon

-against- :

CALMAR STEAMSHIP CO., : Motion for Judgement Notwithstanding the Verdict Or New Trial.

Defendant. :

----------x

Defendant moves this Court to set aside the verdict entered into the above entitled action on October 3, 1974, and to enter judgement in favor of the defendant in accordance with the motion of direct verdict made by the defendant at the close of the testimony on the grounds as stated then and as set forth below.

In the alternative, defendant moves this Honorable Court to set aside the verdict and grant defendant a new trial for any or all of the following grounds:

1. The verdict is contrary to law.
2. The verdict is contrary to the weight of the evidence.
   a) Plaintiff failed to establish by a preponderance of the evidence the allegation of the complaint; that the fall which occurred on defendant's vessel on May 24, 1968, resulted in plaintiff's suffering a tear to the lateral meniscus in his left knee.
   b) The only finding by any orthopedic surgeon that plaintiff

was suffering from a torn lateral meniscus was the finding made in March 1974 at the U. S. Public Health Hospital in Staten Island, New York.

c) The findings of the orthopedic specialists from May 1968 up until September 1971 was that plaintiff was suffering from arthritis in his left knee. Even plaintiff expert orthopedic witness, Dr. Mauer, who examined the plaintiff on September 9, 1971 did not find at that time that plaintiff was suffering from a torn lateral meniscus.

e) Dr. Rizzo's findings in September 1971 confirmed the findings of the doctors in the U. S. Public Health Hospital during the period from May 1968 until September 1971 that plaintiff was suffering from arthritis.

f) Defendant established at the trial a cause for arthritis of the knees through cross examination of Mr. Evans, and the record establishes that Mr. Evans had a history of infectious diseases. Dr. Rizzo testified that such diseases can cause arthritis of the knee.

g) There was no substantial evidence introduced at the trial to prove that the knee operation proximately caused the heart attach. The heart attach occurred ten days after the successful knee surgery and the evidence establishes that during this period of time, plaintiff was also suffering from prostatitis. The opinion of Dr. Cutler does not contain an affirmative finding that the heart attach was caused by the knee operation but rather a

statement that it may be. Dr. Cutler in expressing his opinion had before him the medical records of the U. S. Public Health Hospital and if he was certain as to the

3. The verdict in the sum of $55,000 and $5,000 is grossly excessive and unreasonable under the evidence.

a) Plaintiff's testimony failed to establish that he missed employment for any specific period of time due to the alleged injury. The record clearly shows that from the time of the fall in May 1968 up and through 1973, plaintiff worked aboard ocean going vessels. Plaintiff did not corroborate his testimony as to loss earnings with any evidence to prove that he went back to Puerto Rico to rest his knees. On the contrary, under cross examination and when faced with his statement given at his deposition in September 1971, plaintiff admitted he would periodically go on vacation. His testimony at the trial confirmed that he received from his union vacation pay.

b) Plaintiff's attorney, during his summation to the jury, admitted that no definite number of days were established and asked the jury to use its judgement in an awarding lost wages.

c) As to the $55,000, the jury should not have awarded that sum or any sum, as plaintiff failed to prove by preponderance of the evidence the allegation of the complaint.

FULLER, LAWTON & MOYLES P.C.
17 Battery Place
New York, New York 10004
(344-6100)

TO: Paul C. Matthews
Attorney for Plaintiff
Office and P. O. Address
11 Broadway
New York, New York 10004
(344-1936)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

JULIO EVANS, :

Plaintiff, :

-against- : 70 Civ. 4435

CALMAR STEAMSHIP CO., : Honorable Gus Solomon

Defendant. :

----------x

MEMORANDUM IN SUPPORT
OF DEFENDANT'S MOTION
FOR JUDGEMENT NOV OR A
NEW TRIAL

Preliminary Statement

As the facts and the evidence of this case are well known to the court, this memorandum will only deal with the legal questions in issue.

POINT I
****

PLAINTIFF FAILED BY A PREPONDERANCE OF THE EVIDENCE TO ESTABLISH NEGLEGENCE AND OR UNSEAWORTHINESS.

It is an accepted principal of law that the owner of a vessel is not required to provide an accident free vessel but only one was resonably fit for its intended use. Hill v. Flota Mercante Grancolombiana, S. A. 267 F. Supp. 380 (D.C.La 1967). Seitz v. M.V. The Captantonis 203 F. Supp. 723 (D.C. Ore. 1962).

Pg. 2 (continued)

Further, a mere accident does not establish unseaworthiness. Logan v. Empresa Lineas Maritimas Argentinas 353 F. 2d. 373 (C.A. Mass.1965).

The fact that an accident occurs and a seaman is injured while using auppurtenance in the performance of his duties cannot, without more, establish that the vessel is unseaworthy. Mosley v. Cia. Mar. Adra, S.A. 314 F. 2d 223 (C.A.N.Y. 1963).

In Denaro v. U. S. 337 F. 2d. 275 (C.A.N.Y. 1964) in a case not dissimilar to the instant one, the court held that there was no negligence and the ship was not unseaworthy. (See also Goodrich v. Cargo Ships & Tankers, Inc., 241 F. Supp. 332 (D.C. La 1965).

The testimony establishes that Evans was given notice of the open hatch prior to performing his duties. It is clear from the evidence that the danger was known and obvious to Evans. The court held in Silver v. American Export Isbrandtsen Lines, Inc., 310 F. Supp. 681 (D.C.Va. 1970, that warnings are not necessary if the danger is obvious. The defendant herein more than performed its duty to Evans by placing him on notice of the damger. See also Kiesel v. American Tranding & Production Corp. 347 F.Supp. 673 (D.C. Md. 1972) Oswalt v. Williamson Towing Co., Inc. 357 F. Supp. 304 (D.C. Miss. 1973).

The plaintiff had the burden of proving that the fall was the proximate cause of the injury alleged. Liability cannot be predicated on mere conjecture or speculation as to the proximate cause of the injury. Armstrong v. Commerce Tankers, Corp. 311 F. Supp. 1236 (D.C.N.Y. 1969) aff. 423 F. 2d 957.

In the case of Connorton v. Harbor Towing Corp. 237 F. Supp. 63 (D.C.Md 1964) the court held that the evidence was insufficient that a blow to the engineers chest was the proximate cause of tuberculosis one year later. In the instant case, the evidence was insufficient to establish that the fall in May 1968 was the proximate cause of the meniscus injury diagnosed by Dr. Mauer in September, 1971, which diagnosis Dr. Mauer admitted at the trial was incorrect. The court will recall that in September 1971, Dr. Mauer positively diagnosed a medial meniscus but the surgery in April 1974 was for a lateral meniscus. It is submitted that the evidence as to proximate cause was speculative and mere conjecture (see also Cumberland v. Isthmian Lines, Inc.) 282 F. Supp. 217 (D.C. La 1967). Dr. Rizzo was unequivocal in his testimony that in 1971, the plaintiff was not suffering from any meniscus injury, but merely arthritis. Dr. Rizzo's examination confirmed the findings at the Public Health Hospital that the plaintiff suffered from an arthritis condition. Dr. Rizzo testified in his opinion the lateral meniscus tear found at the U. S. Public Health Hospital in April 1974 must have been caused by some event which occurred after the examinations in

Pg. 4 (continued)

September 1971 by Dr. Mauer and Dr. Rizzo. Plaintiff's evidence was only a mere scintilla as to the lateral meniscus found by the doctors at the Public Health Hospital. The evidence as to the heart condition after the operation does not approach being even a mere scintilla. Diddlebock v. Alcoa Steamship Co., Inc. 237 F. Supp. 538 (D.C. Pa. 1966).

POINT II

THE JURY'S VERDICT OF $55,000 FOR THE INJURY INCLUDING PAIN AND SUFFERING, AND $5,000 FOR LOST WAGES WAS EXCESSIVE.

If the court finds that the vesses was unseaworthy, and or the defendant negligent, it should reduce the jury verdict or set it aside as being excessive.

There was no evidence introduced that as a result of the operation plaintiff suffered any percent of disability. That is, there is no evidence that plaintiff will have a 5%, 10% or even greater disability to his left knee because of the removal of the lateral meniscus.

Further, if in fact Dr. Mauer was correct in diagnosing a meniscus injury in September, 1971, plaintiff did not take any steps to correct the injury at that time, nor prior to the operation in 1974. It must be remembered, that plaintiff entered the Public Health Hospital in April 1974 not for a knee injury, but for the uncomfortable and painful condition of prostatitus. Listed on the following page are a series of cases which awarded damages in a lesser amount than was found by the jury in the instant case and each one of the cases listed on the following page, the plaintiff suffered substantial other

Pg. 5 (continued

injuries besides damage to the knee.

1. Ray v. Jackson
   219 Cal. App 2d 445 ($18,000)

2. Fields v. Kansas City
   377 S.W. 2d 528 ($14,000)

3. White v. Rapid Transit Line, Inc.
   391 P. 2d 148 ($8,081.50

4. Smith v. Bowater
   S.S. Co. 339 F. Supp. 399 ($12,000, Longshoremen)

5. Scott v. S.S. Ciudad Ibague
   285 F. Supp. 613, Affd. 426 F. 2d 1105 ($13,949, Longshoremen)

6. McDaniel v. Louisiana & A. R. Co.
   194 So. 2d 119 ($7,500)

There are, of course, many other cases that can be cited as to excessive verdicts.

As to the award of $5,000 for loss of earnings, there was not any proof submitted that plaintiff actually lost earnings due to the alleged injury. The only evidence was plaintiff's own statement that he took time off to rest his knee. However, during the trial plaintiff did admit that during the period from May 1968 through 1974, he did work aboard many ocean going vessels. The court will recall that he was questioned with respect to his medical record and union physicals which he was required to take each year in order to sail aboard American flag vessels. As a matter of fact, plaintiff admitted that he took vacations periodically and why should defendant have to pay for lost wages when plaintiff was on vacation.

Respectfully submitted,
FULLER, LAWTON & MOYLES P.C.
Attorney for defendant
17 Battery Place
New York, New York 10004

Philip V. Moyles
of Counsel

Paul C. Matthews, Attorney at Law, 11 Broadway, New York 10004
344-1936

January 20, 1975

The Honorable Gus J. Solomon
U. S. District Judge
Chambers
U. S. Court House
Portland, Oregon 97205

Re: Evans v. Calmar
70 Civ. 4435

Dear Judge Solomon:

I am in receipt of a copy of your decision on defendant's motion for a new trial in the case of Evans v. Calmar. Before advising Mr. Evans as to the advisability of accepting the remittitur or undergoing a second trial, I would like to have the transcript of the trial. Please let me know whether the reporter made a transcript for you. If not, would you kindly either refer this letter to him or furnish me with his address so that I may request the transcript.

I assume that a new trial would be on the issue of damages only, although your decision does not clearly state that this is so.

In the event that the determination is to have a new trial, then I would respectfully request that the issue of maintenance be left for the jury in that trial who will be in a better position to pass on it with the additional passage of time to assist them in arriving at the question of maximum cure.

Respectfully yours,

/s/ Paul C. Matthews

PCM/gd
cc: FULLER, LANTON & MOYLES, ESQS.

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND, OREGON 97205

GUS J. SOLOMON
SENIOR JUDGE

January 22, 1975

Mr. Paul C. Matthews,
11 Broadway,
New York, N. Y. 10004.

Dear Mr. Matthews:

Re: Julio Evans v. Calmar Steamship Co.,
(S.D.N.Y.) 70 Civ 4435 (GS)

I did not ask the reporter to prepare a transcript of the evidence adduced at the trial. If you want one, please get in touch with the reporter directly:

Mr. Jerry C. Harris,
Room 230,
United States Court House,
Portland, Oregon 97205.
(Telephone: (503) 221-3113)

I am sure he can get it out for you without delay, but if you need a few additional days within which to decide whether you want to accept the remittitur, that will be all right with me.

At the present time I am inclined to grant a new trial on the issue of damages only, but before making up my mind, I would like to hear from counsel for the defendant.

If there is an issue on maintenance, I will leave it up to the judge who retries the case to determine how it should be handled. If the case is retried, I will not retry it.

Yours truly,

Gus J. Solomon

P.S. I will be in New York on Tuesday and Wednesday, January 28 and 29. If you and Mr. Moyles can get together and agree on a convenient time, I would be glad to take up with you any issue that you think I should decide. You can leave a message at Judge Milton Pollack's office.

cc: Mr. Philip V. Moyles
Mr. Raymond K. Sexton

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND, OREGON 97205

GUS J. SOLOMON
SENIOR JUDGE

April 5, 1975

Mr. Paul C. Matthews,
11 Broadway,
New York, N. Y. 10004.

Mr. Philip V. Moyles,
Fuller, Lawton & Moyles
17 Battery Place,
New York, N. Y. 10004.

Gentlemen:

Re: Julio Evans v. Calmar Steamship Co.,
(S.D.N.Y.) 70 Civ 4435 (GS)

I acknowledge receipt of Mr. Moyles' letter of April 1st, requesting a new trial on the issue of liability as well as damages.

I am of the opinion that the new trial should be confined solely to the issue of damages.

Yours truly,

Gus J. Solomon

Gus J. Solomon

cc: Mr. Raymond K. Sexton

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

JULIO EVANS,

Plaintiff,

- against -

CALMAR STEAMSHIP CO.,

Defendant.

70 Civ. 4435 GJS

(Judge Cannella)

JUDGMENT
#75,433

- X

The issues in the above case having come on for trial on October 2, 1974 before the Honorable GUS J. SOLOMON and a jury, and the jury having rendered its verdict in favor of the plaintiff in the amount of $60,000, and defendant having moved for a new trial and the Court having rendered its decision on January 14, 1975 granting a new trial unless plaintiff file a remittitur of $20,000 of said verdict, and the time for filing said remittitur having been extended by the Court with the consent of the parties until April 24, 1975; and the plaintiff on April 24, 1975 having filed a remittitur under protest without prejudice to the right of either party to appeal therefrom, it is hereby

ORDERED, ADJUDGED and DECREED that plaintiff have judgment against the defendant in the sum of $40,000 plus costs.

Dated: New York, N. Y.
May 14, 1975.

S/ [illegible] F. [illegible]
~~U.S.D.J.~~ CLERK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

JULIO EVANS,

Plaintiff,

- against -

CALMAR STEAMSHIP CO.,

Defendant.

- X

NOTICE OF APPEAL

70 Civ. 4435 JMC

Notice is hereby given that plaintiff appeals to the United States Court of Appeals for the Second Circuit from a judgment entered herein on May 14, 1975.

Dated: New York, N. Y.
June 2, 1975

PAUL C. MATTHEWS
Attorney for Plaintiff
Office and P.O. Address
11 Broadway
New York, N. Y. 10004
344-1936

TO: FULLER, LAWTON & MOYLES, ESQS.
Attorneys for Defendant
17 Battery Place
New York, N. Y. 10004

CLINICAL RECORD | CONSULTATION SHEET

REQUEST

TO [illegible] FROM [illegible] DATE OF REQUEST

REASON FOR REQUEST [illegible]

[illegible] pain left knee, limping
X-rays ordered
Please evaluate + treat

PROVISIONAL DIAGNOSIS

Torn cartilage L knee?

DOCTOR'S SIGNATURE [signature] | APPROVED | PLACE OF CONSULTATION ☐ BEDSIDE ☐ ON CALL | ☐ EMERGENCY ☐ ROUTINE

CONSULTATION REPORT

57 yo AS gives history of L knee injury 4? exact mechanism some 5 yrs PTA associated with knee swelling. Since then he notes pain on using stairs, clicks on squatting & numerous episodes of locking L knee.

OE: knee has full ROM, stable, no effusion
no significant quad atrophy
there is joint line tenderness both medially & laterally & clicks on both standard & reverse McMurray.
[illegible] possible medial & lateral meniscus tears L knee

Plan Presentation for Ortho conference Mon

(continued on reverse side)

SIGNATURE AND TITLE [signature] | DATE 3/29/74 | IDENTIFICATION NO. | ORGANIZATION

PATIENT'S IDENTIFICATION (For typed or written entries give: Name - last, first, middle, grade, date, hospital or medical facility) | REGISTER NO | WARD NO. 2Fo

34319

RYAN JUDD
[illegible] 12 21 16 M

CONSULTATION SHEET
Standard Form 513

10

EF 6

CLINICAL RECORD — PREOPERATIVE - PREANESTHETIC SURGICAL SUMMARY

PREOPERATIVE DIAGNOSIS
Internal Derangement Lt knee

OTHER DIAGNOSES
BPH

OPERATION PROPOSED
Arthrotomy Lt knee

AGE	PERTINENT HISTORY
52	5 yr Hx Lt knee locking

PREVIOUS OPERATIONS
TAH 1960

ALLERGY
0

DRUG SENSITIVITY
0

PRESENT DRUG THERAPY (Any tranquilizing drugs)
0

ANY STEROID HORMONES (Cortisone, etc.) PAST 3 MONTHS
0

HEIGHT	WEIGHT	B. P.	PULSE
5' 1"	120	140/90	68

ANY CNS DISORDERS
0

POSITIVE PHYSICAL FINDINGS (Include those influencing patient's general condition)
Medial & lateral joint line tenderness

RESPIRATORY COMPLICATIONS
none

CARDIOVASCULAR COMPLICATIONS
none

LABORATORY FINDINGS

HBC	RBC	WBC	DIFF	DATE OF TESTS
15-5	5-25	4.500		4/1/74

URINE
clear

X-RAY - CHEST
normal

ECG
Sinus Bradycardia

OTHER

TYPED AND CROSS MATCHED	SEROLOGY	BLOOD AVAILABLE	AMOUNT
☐ YES ☐ ~~NO~~	N R	☐ YES ☐ ~~NO~~	

PATIENT'S IDENTIFICATION (Name — Last, First, Middle)

34319

JUL 10
21 16 M

REGISTER NO.

WARD NO.
BDS Ward

DATE
4/4/74

SIGNATURE OF PHYSICIAN
[illegible] M.D.

NSM-185 (3-69) (FORMERLY PHS-2810)
PREOPERATIVE - PREANESTHETIC SURGICAL SUMMARY

4/8

CLINICAL RECORD | **OPERATION REPORT**

PREOPERATIVE DIAGNOSIS

Internal derangement left Knee

Internal derangement, left knee

SURGEON	FIRST ASSISTANT	SECOND ASSISTANT
Dr Moore	Dr Gamble	Dr Mastakis, Dennis
ANESTHETIST	ANESTHETIC	TIME BEGAN
~~Miss Marilyn Gresham~~	Pentothal 2% 20 cc + 02 Fentanyl	9:30 AM
SURGICAL NURSE	INSTRUMENT NURSE	TIME ENDED
E. Scarlett	Mrs. Gertrude P. Ann, Neg. Killen	TIME OPERATION BEGAN 10:00 AM
		TIME OPERATION COMPLETED 10:15 AM

OPERATIVE DIAGNOSES

DRAINS (Kind and number)

SPONGE COUNT VERIFIED 10:00 a.m. 10:15 a.m.

None

Posterior peripheral tear of the lateral meniscus and hypertrophic fat pad on left knee.

MATERIAL FORWARDED TO LABORATORY FOR EXAMINATION

Meniscus & Fat pad

OPERATION PERFORMED

Arthrotomy & meniscectomy left knee

Arthrotomy and meniscectomy, left knee

DESCRIPTION OF OPERATION (Type(s) of suture used, gross findings, etc.)

MAJOR	MINOR	DATE OF OPERATION
✓ Major		4-5-74 4/5/74

PROCEDURE:

After induction of general anesthesia the skin of the left lower extremity was prepped and draped in a routine fashion using pneumatic tourniquet which was inflated to 500 mm. of Mercury after an application of an Esmarch bandage. With the knee fully flexed a bruser approach to the lateral aspect of the left knee joint was made. On opening the knee joint it wasimmediately apparent that the lateral aspect of the infra-p atellar fat pad was very large and seemed to be impinging on the joint line on full extension of the knee corresponding to the area of tenderness at the extreme anterior end of the lateral meniscus which preoperatively was thought possibly due to a tear of the lateral maniscus. This area of hyperchromic fat pad was excised and trimmed back tp prevent impingement. Following this, the lateral meniscus was explored with a button hook and it was found that upon pulling forward on the meniscus the posterior aspect of the meniscus displaced forward between the lateral femoral condyle and the tibial plateau and when tension was released it snapped back again. It was evident there was a posterior tear in the peripheral portionof the lateral meniscus and the meniscus was therefore excised using Smiley meniscus knives. The femoral condylar cartilage and the tibial plateau cartilage appeared to be in good condition as far as could be visualized. The anterior portion of the anterior cruciate ligament was visualized and appeared to be in satisfactory condition. The medial aspect of the knee joint couldnot be visualized.

SIGNATURE OF SURGEON

Continued/sc

DATE Dict 4/5/74

PATIENT'S IDENTIFICATION (For typed or written entries give: Name (last, first, middle), grade, date, hospital or medical record number)

Evans Julius

EVANS, Julius

USPHS Hospital, Staten Island, New York 10304

REGISTER NO. 34319

34319

WARD NO. D25

OPERATION REPORT
Standard Form 516

Dr 2/57

Gone

23

The knee was irrigated with sterile saline. The synovial and ileotibial band were closed ina routine fashion and #3-0 ethilon sutures were placed in the skin and covered with adaptic dry sterile dressing, Sterile Webril and a Jones dressing. The pat ent tolerated the procedure well. The tourniquet was released after approximately fifteen minutes. The patient was returned to the Recovery Room in satisfactory condition.

GD Moore, MD

/s/Dr. Gordon D. Moore, Med. Off cer/sc

EVANS, Julio 34319
USPHS Hospital, Staten Island, New York 10304

CLINICAL RECORD | DOCTOR'S PROGRESS NOTES (Sign all notes)

DATE

3/13 57 yo d ~~[illegible]~~ ~~[illegible]~~ TAH
to admit [illegible] Evaluation
admit [illegible] IVP, Barium Enema

3/18 Evaluation ~~[illegible]~~
IVP pending

3/19/74 Drake
I - 70
II - 20
90

3/22/74 see cysto. Note

(Continue on reverse side)

PATIENT'S IDENTIFICATION (For typed or written entries give: Name - last, first, middle; grade; date; hospital or medical facility)

REGISTER NO. | WARD NO.

[illegible] JULIO
[illegible] 21 16

DOCTOR'S PROGRESS NOTES
Standard Form 509
May 1969 (Rev.)
General Services Admin.
Int. Agency Comm. on Med. Records
509-107

FF 6

31

DOCTOR'S PROGRESS NOTES
(Sign all notes)

DATE	
	ER T.J.C. ROOM [illegible]
	[illegible]
	[illegible]
	[illegible]
	[illegible]
11/5/74	Referred in transfer from CCU for consult for L knee problem — see consult sheet. Presented to conference. Consensus is that patient may have ant tear of lateral meniscus. Plan explor lateral compartment if dz no findings then explor medial compartment
	[illegible] MD

CLINICAL RECORD | DOCTOR'S PROGRESS NOTES (Sign all notes)

DATE

4/2/74 Repeat SMA 12 drawn 4/4/74
Glu 99 Alk phos 54
BUN 19 SGOT 54
U A 2.3 LDH 133
P O4 3.3 Bilirubin 0.9
Ca 8.5 Chol 194
T P 6.6
Alb 4.2

Effort, MD

4-4-74 Pre Anesthesia note
57 year old male presenting for ~~ab~~ hysterectomy
(L) knee
Past Surgical History - 1960 tonsils - Local
Cysto - local 3-22-74
Past Medical History
1944 Malaria - 1960 prostatectomy - tonsillectomy
↑ BP - Chronic headache - 74 asthma 30 Last seizure
Allergies - denies Drugs - Aldomet 250 BID
Hydrodiuril 50 mg TID
P.E. alert CO oriented pt - pleasant Caucasian
male in ~~acute~~ mild distress, pain in
L knee at times, Chest clear

(Continue on reverse side) Cont

PATIENT'S IDENTIFICATION (For typed or written entries give: Name—last, first, middle; grade; date; hospital or medical facility)

34319

EVANS JULIO

REGISTER NO. | WARD NO.

DOCTOR'S PROGRESS NOTES
Standard Form 509
(Rev. Dec. 1965)
General Services Administration
Int. Agency Comm. on Med. Records
509-101

32

DOCTOR'S PROGRESS NOTES
(Sign all notes)

DATE	
	anesthesia cont -
4-3-74	P.S. #1 BP - 130/90 P-90
	Lab - Hct - 44.8 Hgb 15.5 Chest xray
	EKG - SB SMI, - WNL prime - OK
	Plan anesthesia - general - pt. to be given
	plan discussed with pt. he agrees
	Chukuka KN SNA
4-4-74	Pt. seen from last evening
	No = 147
	K = 4.9
	Allowed
4/5/74	Op Note
	Pre Op Dx - Intestinal obstruction
	to know
	Post Op Dx Postoperative part
	ileal and to jejunal /
	anastomosis & hypertrophic
	for psl.
	Procedure: Excision jejunal /
	anastomosis, Partial exci-
	sion of fat pad,
	Anesthesia - General
	Surgeon: Kyle Cowles Dennis
	Assistant

CLINICAL RECORD | DOCTOR'S PROGRESS NOTES (Sign all notes)

DATE

Condition - satisfactory
[illegible]

4/4/74 5:30 PM
Patient has been hypertensive (200/130) post op. Unable to V.S. - catheterized. took a long time to awaken. Dressing dry
[illegible]

4/6/74 Afebrile, VS stable, Pain at operative site, drainage noted. Being groundwicked.
[illegible]

4/7 T. to 101° today. Pt. ? (+) Stasis sm. chest clear - hrs (-) CVAT. Suspect UTI. Placed on Nardusin p.o. Urine culture.
[illegible]

(Continue on reverse side)

PATIENT'S IDENTIFICATION (For typed or written entries give: Name- last, first, middle; grade; date; hospital or medical facility) | REGISTER NO. | WARD NO.

34319

DOCTOR'S PROGRESS NOTES

35

DOCTOR'S PROGRESS NOTES
(Sign all notes)

DATE	
4/9/24	Foley Cath removed this AM. Urine to void. Cath kept in secured. To be removed on this pt be post on urocholine Dillard MD
4/10/24	Pt was unable to void after removal of Foley cath. Catheter reinserted Dillard MD
4/11/24	Called to see Pt for c/o of Chest pain. He had 2 short episodes of sharp pain on Inspiration. Vs were stable Lungs clear to ausc. EKG ~~was~~ taken at 11:00 PM showed marked changes from EKG taken on 3/10/24. Medical resident called and discussed with Dr Dillard will MT pt to be transferred to CCU for w/u - Hollar

CLINICAL RECORD | DOCTOR'S PROGRESS NOTES (Sign all notes)

DATE

4/14/74 Resident transfer Note -

57 yr old male admitted to Ortho Service for evaluation of BHP. Orthopedic consultation was obtained for evaluation of knee pain. His history was per pt & Chart on 4/15/74.

ROS - History of Essential Hypertension

Meds: K41

Denies cardiac history - Denies history of Diabetes

Feder

4/17 Pt being followed by orthopedics & GU. I was called to see him as c/o chest pain - SOB. This began Q 4 PM and associated w dizziness and chills. Chest pain was described as sharp and located mid & posteriorly. Attempts to inhale when recurrence of pain. Pt states pain cont'd until 4 PM today.

Pt is a hypertensive Caucasian

(Continue on reverse side)

PATIENT'S IDENTIFICATION (For typed or written entries give: Name- last, first, middle; grade; name hospital or medical facility)

34319

REGISTER NO. | WARD NO.

37

DOCTOR'S PROGRESS NOTES
(Sign all notes)

DATE

RE: resp 20/min, pulse 100/min
B.P. = 130/80 mm Hg, pt alert & responsive
denies any discomfort

Heart: RSR (100/min), no
other sounds

Extremities: no edema/cyanosis or
pain over ~~left~~ both calves
bilaterally.

EKG: Elevation of S-T waves in
Lead II, Q waves Lead III
& S-T elevation and S-T
depression in AVF.

Imp: Acute MI
plan: admit to CCU

[illegible]

CLINICAL RECORD | DOCTOR'S PROGRESS NOTES (Sign all notes)

DATE

5/16/74 Ortho

The patient is being discharged from the hospital today from CM service.

Rehabilitation at the Lt knee has been compromised by postoperative complications of urinary retention and myocardial infarction.

Today the Lt knee has a range of motion limited to an arc of 160° → 30°. There is no effusion and no instability however quadriceps power is inadequate for unprotected WT bearing. He can lift 10 lbs with the Lt quads whereas on the other side 25 lbs quad lifting ability should be present for unprotected WT bearing. The patient is discharged with a cane.

It would (Continued on reverse side) that it [illegible]

PATIENT'S IDENTIFICATION (For typed or written entries give: Name, Art, Brst, Initials, Grade, state, hospital or medical facility) | REGISTER NO | WARD NO

Lyons, Julio
34319

DOCTOR'S PROGRESS NOTES

53

5c

DOCTOR'S PROGRESS NOTES
(Sign all notes)

DATE

itation of the Lt knee will be slow. The chief goals should be regaining full extension and full quadriceps power. The patient reports relief of the locking symptom present preoperatively in the knee however with incomplete motion it is difficult to assess the accuracy of this impression.

Patient instructed that full knee extension and full quadriceps strength are imperative for rehab of knee. Prognosis at this point is guarded. (Cole, MD)

...NTING OFFICE 1969 O—355-770

elsr

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

JULIO EVANS, :

Plaintiff, :

- v s - : 70 Civ. 4435

CALMAR STEAMSHIP COMPANY, :

[EXCERPTS]

Defendant. :

----------x

B e f o r e :

HON. JOHN M. CANNELLA,

District Judge.

New York, N. Y.
April 23, 1975 - 2:00 p.m.

A p p e a r a n c e s :

PAUL C. MATTHEWS, ESQ.,
Attorney for plaintiff.

FULLEN, LANTOW & MOYLES, ESQS.,
Attorneys for Defendant;
By: PHILIP V. MOYLES, ESQ., of Counsel.

2 elsr

[At 2:50 p.m. a jury of six jurors and one alternate were duly impaneled and sworn.]

THE COURT: The case has different stages in it. We have just completed the first stage, which is called the selection of the jury. The lawyers get an opportunity to talk to you twice during the course of the trial. The first time is called the opening, which is the next phase of this case.

After they open to you, then the testimony is taken, and after the testimony is taken, then the lawyers get a chance to talk to you a second time, which is called the summations.

After that, the Court will give you the law in this case, and after that you will go out to the jury room and deliberate. There is a jury room behind here, and before we get finished today the Clerk of the Court will show you where it is.

Every time we part company, when you come back, please go to the jury room and wait there until you are called and the Clerk will come and get you.

Under the law I am obliged to tell you every time we part company that you may not discuss the case amongs yourselves nor with anybody else or form or express an opinion in this matter until it is submitted to you for your

3 else decision.

We will start in the morning at ten o'clock. We will go to one. We will reconvene at 2:15 and we will continue on until about 4:30 or five o'clock, if we have to, but never later than five, unless we have to stay late for the witness. This case, as I understand from the lawyers, shouldn't take more than two or three days at the outside. You may proceed.

[End of excerpt.]

1 elsr

JULIO EVANS,

- v s - 70 Civ. 4435

CALMAR STEAMSHIP COMPANY.

April 24, 1975

[10:00 a.m.]

- - -

[In the courtroom in the absence of the jury.]

THE COURT: In looking over this case last night and in finding out what Judge Solomon had done in this case I became quite concerned with the fact that in my opinion there's never been any determination of what the contributory aspect or the comparative negligence aspect of this case concerned. Judge Solomon submitted it to the jury on a very general charge. There were no special interrogatories indicating what, if any, percentage the plaintiff was at fault himself, and under the circumstances I think that issue should be presented to the jury. They simply can't come in with an amount and say this is it, because there still remains open the question of whether or not in fact he himself contributed in any degree to the happening of the accident.

MR. MATTHEWS: Your Honor, the order of Judge Solomon is quite specific --

2 elsr

THE COURT: I couldn't care less what he ordered. The fact of the matter is that his charge to the jury was a general charge. There were no special Interrogatories; there is no showing whether the jury took of 10 percent, 5 percent, no percent or 50 percent. And I can't see how this jury can assess damages unless they determine what percentage he himself contributed to the happening of the accident particularly in light of the way this accident happened. I just can't see it.

The only thing I can see is that you have got to present to this jury what happened at the time of the accident, and then they would have the chore of determining what, if any, amount they should subtract from the total verdict as a result of his own conduct. I can't see it any other way.

MR. MOYLES: Your Honor, I concur with you 100 percent. I raised this question with Mr. Matthews after our meeting on Wednesday when we had the conference, and I was going to make an application to that point for a directed instruction on that charge.

THE COURT: How can I instruct them if they don't know a thing about what happened at the time of the accident?

MR. MOYLES: Of course, I think that may be a

3 elsr

joint burden and I was going to get into that more and more. But he didn't go into any part of it on direct.

THE COURT: I don't know. I cannot do this, I cannot submit to this jury a request for them to come in with an amount of damages when they are missing one very essential element in the question of damages.

MR. MATTHEWS: Your Honor, this precise question was submitted to Judge Solomon, who determined that the new trial should be on the issue of damages only.

THE COURT: I cannot accept it. He is a colleague and I respect his judgment, and I think he is one of the greatest judges I have met. But on this point I can't agree with him. I cannot understand how he figured out what this jury did as far as the plaintiff's own conduct is concerned. He gave a very general charge on the law, and he gave a charge as far as comparative negligence is concerned, though he never found out what, if any, comparative negligence there was as a result of the jury's verdict. I don't know.

Can you tell me whether they found him to be 100 percent entitled to a verdict or 50 percent entitled to a verdict, or 10 percent?

MR. MATTHEWS: They necessarily had to find no contributory negligence --

4 elsr

THE COURT: Oh, absolutely not. On the state of the facts of this, a man backing up in the middle of the night passed an open thing which he himself is supposed to be supervising, he is a boatswain and he is supposed to be telling these other fellows what he do and he doesn't know the condition there. If he didn't know the condition there, what is he doing there? I just can't buy that.

I respect my colleague, but I can't do that.

MR. MOYLES: Your Honor, I will find in the transcript of the first trial that Mr. Evans admitted that he had knowledge that this hatch was open because he discussed the situation with the mate prior to the incident.

THE COURT: I cannot find that this jury found that he was a hundred percent entitled to the verdict on the state of the case. Even though Judge Solomon said that, I cannot accept it.

MR. MATTHEWS: In view of your Honor's ruling the entire preparation of this trial has been with my understanding of Judge Solomon's order.

THE COURT: I can understand that, and I would declare a mistrial if you want it. Or, you can put him on and go through the action and then let him explain to this jury what happened, and the defendants can bring in anybody they want on that particular point. Only his own

5 elsr

conduct. Their liability has been established.

The question is how much would they have to subtract, if anything. It could be that they would subtract nothing, I don't know.

MR. MATTHEWS: Could I have a moment, your Honor?

THE COURT: Yes, go ahead, Mr. Matthews.

[Pause.]

MR. MATTHEWS: I would respectfully ask that your Honor declare a mistrial.

THE COURT: Under the circumstances of this case I will declare a mistrial because I don't think it fair to the defendant to proceed in this fashion, because I do think that the question of whether or not his own conduct in any way contributed to the happening of this accident, and the percentage of it, if there be any, is very relevant to the determination of damages in this case. I find that the liability has been established as far as the defendant being liable, but I am unable to ascertain what, if any, percentage the jury in fact found because of the general verdict.

MR. MOYLES: Your Honor, Mr. Evans is here. I do not intend to call any witnesses at all on this contributory negligence aspect. I think his testimony is

6 elsr

sufficient for the jury --

THE COURT: Why don't you take an adjournment until Monday and prepare him and come in on Monday, and we'll go before this jury?

MR. MATTHEWS: Your Honor, I would prefer a mistrial because the way that the evidence has gone in it is completely out of order --

THE COURT: No, I don't think that is fair to the defendant. I will give you till Monday to prepare it. I don't see why you need anybody else except Evans. I am not going to lose all this time which we have already expended in this fashion. I will put the case over until Monday if you want until Monday, or I will put the case over until tomorrow, whichever you prefer, because I am going to continue on here because I am going to instruct this jury on comparative negligence.

MR. MATTHEWS: Your Honor, I would like to request a conference with the Court. I have just this little problem. I have a ten o'clock call before Judge Weinfeld.

THE COURT: How are you going to go ahead here --

MR. MATTHEWS: Your Honor, I have my daughter here. She's never been before a judge or anything like that. Perhaps my adversary can take care of answering

7 elsr

the matter before Judge Weinfeld, and I would appreciate it if we could have a few minutes before the Court, or maybe we could discuss it now.

THE COURT: All right. Go up to Judge Weinfeld and come back again.

[Pause.]

THE COURT: Do you mean the question of compromise?

MR. MATTHEWS: Yes, your Honor.

THE COURT: Sure. Go up to Judge Weinfeld and come back again.

[Pause.]

THE COURT: The following has happened in this case: Last night, upon preparing to charge this jury and to look into the various aspects of the damage question, the Court, upon close examination of what has happened here has found out as follows:

The case was tried before Judge Solomon on the charge which was a very general charge, and the jury came in with a verdict which was around $60,000. The judge then upon the rendering of the verdict ruled upon the motion and made a decision that the liability had been established in favor of the plaintiff, but that the amount in his opinion was excessive and therefore he made a remittitur

8 elsr

for a new trial unless $40,000 was agreed upon by the parties.

The parties did not agree on this amount. However, in the general verdict which was rendered by the jury before Judge Solomon there was no special Interrogatory concerning what, if any, contributory conduct on the part of the plaintiff contributed to the happening of the accident. It is impossible to determine at this time whether the jury felt that there was none at all or whether there was 90 pcercent, and as I think was mentioned by Judge Solomon in his charge, or any other percent.

I was not aware of this aspect of the case when we started it, but now that I have become aware of it I have advised the lawyers that this aspect of the case will be presented to this jury. So that there is no question at all of the liability as far as the defendant has been established by the prior trial before Judge Solomon, but the additional element which must be determined by this jury is, what percentage, if any, did the plaintiff in his conduct contribute to the happening of this accident. And then the jury should deduct that percentage from the total verdict which they would come in with in the case in their deliberations.

The Court has apprised the lawyers of this fact,

9 elsr

and Mr. Matthews will make known his position now, and then I will hear Mr. Moyles, and make directions.

MR. MATTHEWS: Your Honor, when you first advised us of this I mentioned my surprise to ur Honor and then your Honor indicated that you would declare a mistrial. I asked for permission to confer with my client, Mr. Evans, who is in the courtroom. I conferred with him and I told your Honor that I would accept your Honor's offer for a mistrial; that I thought in the in the interests of justice that it would be necessary.

Later on in, I believe it was in discussion in the robing room, your Honor indicated that rather than declare a mistrial --

THE COURT: That was not in the robing room. That was right out here.

MR. MATTHEWS: Very well, your Honor.

THE COURT: It was during the course of the discussion when it dawned upon me that we had spent such judicial time on this that it would be wasted in the context of this case.

There is no reason why this plaintiff cannot testify as to what his conduct was at the time the accident happened. He's been on the stand now for approximately a day and there is no reason he can't continue

10 elsr

on and tell the jury what happened in this case.

MR. MATTHEWS: I think I did point out to your Honor that one of the reasons why I felt a mistrial would be in the interest of justice was because my entire preparation of this case, my entire opening to the jury, my selection of the jury was based upon my reading of Judge Solomon's order that the new trial would be on the issue of damages only as stated in his order.

THE COURT: That to me as I indicated in very strong language inside is ludicrous, stupid and asinine. You are the lawyer that tried this case before Judge Solomon. You went through a long trial on this case and you developed all the facts in the case. You prepared this case for the purpose of establishing damages, and to say that you need extensive preparation in this case because this is actually what you are saying, is to me ludicrous.

There isn't any reason why this plaintiff can't tell this jury what happened in this case, and I don't know how much preparation you would need. I am, as I told you before, giving you until 2:15. I said two o'clock, I will make it 2:15 to further prepare your client.

But to make statements that you need time and that your thinking and your rationale is such that you are so gaited to trying only the damages aspect of this

11 elsr

case that you can't change gears and now indicate to the jury what the further aspects of this case is, berates your ability, because I have had you before me before; you are an excellent lawyer; you know exactly what you are doing; you are not a novice, and I would be non-plussed if you could not proceed in fairness to your client at 2:15.

If I determine during the course of the presentation that you have in fact been affected by this, I will then take further steps. But I see no need to take further steps at this time. I feel you are fully qualified to go ahead and protect your client's interest, and put your best foot forward.

MR. MATTHEWS: Your Honor, I have a second application in view of your Honor's having denied my first application, which I feel should properly be made on papers and that is as follows:

The alternatives is to accepting the remittitur or to obtaining a new trial on the issue of damages and to what extent have just at this moment been made clear to the plaintiff by your Honor's ruling. I believe that the law allows the plaintiff to accept a remittitur under protest and to still test whether or not the trial judge in the first instance, that would be Judge Solomon, abused

12 elsr

his discretion in granting the remittitur.

We discussed this, your Honor, off the record at another time. I would make this application in this case, your Honor.

THE COURT: I will reserve decision on that application, but we will proceed with the trial.

MR. MATTHEWS: We can't have both.

THE COURT: Yes, you can. I will just simply reserve decision on your application, and I take it as a speaking application. I don't see that you have to put it on papers. The point is very clear. It's very simple.

If that is your right, I will simply set aside any verdict that this jury makes and proceed in the other fashion. But I am not going to waste the time of the Court by discharging this jury and then having to start all over with another jury if in fact your position is right.

MR. MOYLES: Your Honor, as to the first application, of course, I am prepared to go forward before this Court with this trial. I am prepared to suspend my cross-examination which is presently existing of Mr. Evans to permit counsel for the plaintiff to put him back on redirect as to the issue on contributory negligence. And then, of course, I am prepared to consent that each counsel have a brief small opening statement prior to that in

13 elsr

relation to this new issue.

As to the second application, I would call your Honor's attention to the meeting we had in the robing room approximately one week ago whereupon Mr. Matthews advised this Court that he felt that Judge Solomon was giving two bites of the apple --

THE COURT: Wait a minute. The second phase of it is absolutely moot by virtue of the fact that it is part of the order which Judge Solomon signed which indicates that thereafter if the plaintiff on or before Monday, February 3, 1975 shall serve upon counsel for the defendant and file in this case a remittitur of $20,000 on the verdict, and so forth, the time has gone by. It's absolutely moot.

MR. MOYLES: I will point out one thing. I did extend this time in relation to that order so that he could obtain the transcript of the previous trial, so that he could be in a position to discuss the remittitur with his client.

THE COURT: You haven't got the right. That is absolutely a nullity. Your action with him, you can't change Judge Solomon's order by you saying, well,we are going to agree to something else.

MR. MOYLES: Let me see, your Honor. He said would this be all right with me; I said yes, if you want to

14 elsr

communicate with Judge Solomon. I'm not trying to put you under the gun.

My point is, he can't have two bites of the apple. He had an election; The remittitur or the new trial.

THE COURT: That is what I find, and I find this motion is rendered absolutely moot by Judge Solomon's order. We will continue on with this trial at 2:15.

Bring the jury in and we will advise them that we are going to bring them in at 2:15.

[The jury entered the courtroom.]

THE COURT: Sit down anyplace, because you are not going to be here more than a minute anyhow. There is a matter which does not concern you at all in this case; it's got nothing to do with your duties, which requires me to put this case over until 2:15. So please return at that time. In the meantime, don't discuss the case amongst yourselves nor form any opinion in this matter until it is submitted to you for your opinion.

Please be here as close to 2:15 as you can so we can start at that time. Thank you for coming in. You are excused until that time.

[The jury left the courtroom.]

[Recess.]

15 elsr

A F T E R N O O N S E S S I O N

[2:15 p.m.]

[In the courtroom in the absence of the jury.]

MR. MATTHEWS: Your Honor, Mr. Moyles has advised me that he has authority to pay the remitted verdict and with the alternatives that have been left open here before your Honor, rather than proceed with this trial, the plaintiff has no alternative but to accept that.

THE COURT: All right. Have him come up here.

MR. MOYLES: Your Honor, I have the authority of the remittitur. I requested that on this record judgment be entered or remitted. I do not anticipate nor am I going to recommend any appeal. But I got the authority from my client because Mr. McCormack, who is the counsel in that office in charge of the matter, is in London and even though I was granted the authority, they requested that I do it in the form that judgment be entered just in case Mr. McCormack came back --

THE COURT: There is no objection to that.

MR. MATTHEWS: Your Honor, I think it is better for all sides that we do it that way.

THE COURT: All right.

Not to complicate things, we have to extend, and I think I have the information, the February 23, 1975 date

16 elsr

I believe it was, or whatever the date was, I extended nunc pro tunc to this date.

MR. MOYLES: That is acceptable to the defendant, your Honor.

THE COURT: Fine. Plaintiff is nodding his affirmance. The date was February 3. I extended it from February 3 to the present date.

I may state that I spoke to Judge Solomon and he indicated that anything that I would do would be done as far as he was concerned with his full consent. Suppose you put on the record what the agreement is.

MR. MOYLES: Defendant hereby consents to the remittitur as ordered by Judge Solomon, $40,000, and consents to judgment being entered against the defendant in that amount.

MR. MATTHEWS: That is without prejudice to the right of either party to appeal.

MR. MOYLES: Correct.

THE COURT: The agreement of the parties is noted and the Court will -- do I have to enter any judgment or anything in this?

MR. MATTHEWS: Somebody does.

THE COURT: All right. Submit the judgment and either do it together or each one can submit his own and

17 elsr

I will adopt one or the other or make one my own.

MR. MOYLES: I would be prepared for your Honor to enter judgment on the record today, rather than going through the proposed submitting of judgment and then I will obtain a check post haste and tender it to Mr. Matthews and then accept the satisfaction of judgment.

THE COURT: All right. Somebody has to prepare it. I direct that judgment be entered. You prepare a form and I will sign it. If you can do it this afternoon, well and good. I will be here until five o'clock or maybe a little later.

THE LAW CLERK: Judge Solomon's order provides that an order of $40,000 plus Court costs may be entered. Maybe if we note on Judge Solomon's order that this order is hereby entered of today's date nunc pro tunc, if you take it to the judgment clerk she may be able to tell you how to get a short form order.

THE COURT: I just add on an endorsement of Judge Solomon's order indicating that I have extended it nunc pro tunc and indicating that it should be entered. Suppose you go with my Law Clerk and agree on the form of the endorsement and I will sign it.

We have to bring the jury in and tell them that they're excused.

18 elsr

[The jury entered the courtroom.]

THE COURT: You know, you are only selected when there is a dispute between the parties. They have resolved the dispute between themselves. In other words, they have settled the matter, so there is no further need for your services, but I thank you anyway for your services to the Court.

Will you please go back to the jury clerk and you will receive further instructions.

[The jury was discharged and left the courtroom.]

- - -

A-32

Calmar S/S Company
Name of Company

PHYSICAL EXAMINATION REPORT

Social Security No. 051-18-3819

Name Julio Evans Age 51 Color ..... Rating Boy

Dental exam.: Good Fair Poor Requires Attention Plates

Height 62 Skin Clear Hair Blk Hearing Nor

Temp. N Weight 172 Ears Neg Nourish Good

With Glasses—Lt. ..... Rt. .....

Head Neg Nose Neg Eyes Neg Without Glasses—Lt. ..... Rt. .....

Color of Eyes Brn Pupils EQR Color of Mucous Membrane Nor

Conj. Clear Sclera Wh Mouth Neg Throat Neg

Lungs Neg

Chest Neg

Arteries Nor

Veins

Heart Neg

Abdomen Neg Spleen ..... Liver .....

Stomach Neg Kidneys Neg Intestines Neg

Genitalia Neg

Hernias & Hernial Rings Neg

Extremities Neg

Spine Mobility Nor Anal Region .....

Bone Joints Neg Feet Neg

History of previous injury, tuberculosis or other illness

Malaria - 41

T & A

DEFENDANT'S EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
ID

Vaccination —

Operative Scars .....

Blood Pressure and Urinalysis, if indicated 146/100

Port Baltimore

Date 7/11/68

Ship S/S Calmar

I hereby certify that I do not now have and have never had, to my knowledge, any physical disability, sickness or accidents except as noted on this medical examination report.

Signature of Seaman Julio Evans

Accepted ..... Rejected .....

Signed DRS. BUCHNESS & BUCHNESS 210 E. LOMBARD STREET BALTIMORE 2, MARYLAND M.D.

IMPORTANT: WAIVER ON REVERSE MUST BE COMPLETED FOR ALL POTENTIALLY DISABLING CONDITIONS

WAIVER OF CLAIM

VESSEL..... EXAMINING DOCTOR.....

COMPANY.....

WHEREAS my union has sent me to the above vessel for employment as a seaman and I desire such employment; and

WHEREAS the above Doctor, acting for the above owners, operators or agents of such vessel, has examined me and found:

1. .....

2. .....

3. .....

4. .....

5. .....

WHEREAS the above Corporation on the basis of its Doctor's findings is disinclined to hire me:

NOW THEREFORE in consideration of the above Corporation employing me as a seaman on such vessel, I hereby waive any and all claims that I may now or hereafter have against the above Corporation or against the said vessel for any accident, illness, or ailment in connection with, due to, or resulting from the condition(s) found by the above Doctor or any aggravation or extension of said condition(s). It is my intention that this agreement shall include any and all Maintenance and Unearned Wage allowances, to both of which I hereby waive all claim.

.....Signature

WITNESS TO SIGNATURE .....Rating

.....Date

SPACE FOR DOCTOR'S COMMENTS

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

STEAMSHIP COMPANIES
SPARROWS POINT, MD.
1963 JUL 15 AM 8 49
Baltimore
7/17/63
8/3 Cotton

SEAFARERS' WELFARE PLAN
MEDICAL DEPARTMENT
675 FOURTH AVENUE
BROOKLYN, N. Y. 11232

965-2440-1-2-3-4

JOSEPH B. LOGUE, M. D.
MEDICAL DIRECTOR

DEFENDANT'S
EXHIBIT
U.S. DIST. COURT
S. DIST. N.Y.
21 ID

JUNE 24, 1974

RE: EVANS, Julio
SS# 051-18-3819

Attached please find medical records relative to the above named.

The fee for photostating same is in the amount of $7.00. Please make check payable to the Seafarers Welfare Plan.

Thank you.

Very truly yours,

(Miss) Florence Penney

/fp
Att.

ORIGINAL ☐
or
'AL RE-EXAM ☐

NO.

SEA[illegible]RS' WELFARE PLAN
PHYSICAL EXAMINATION REPORT

ADDRESS

Port F.E. Date 9/12/72 19

Name Julio Evans (LAST) (FIRST) (MIDDLE NAME, INITIAL, OR NON) Date of Birth [illegible]

Rating Deck "Z" No. 111669 SS: 051-18-[illegible]
[illegible] 57

PAST MEDICAL HISTORY:

Have you had any of the following (if so, when)?

Asthma No | Heart trouble no | Rheumatism no
Tuberculosis no | Diabetes no | Epilepsy no
Nervous or mental trouble No | Stomach trouble NO | V.D. no
Other illnesses No

Skull NO
INJURIES: Back NC
Extremities No

OPERATIONS:

I certify that the above answers are true and correct: Signature Julio Evans

PHYSICAL EXAMINATION:

1. Re[illegible] Weight 122 lbs. Height 5 ft. [illegible] ins. Temperature [illegible]
2. Vision: R.20/ 30 L.20/ 30 Corrected: R.20/ 20 L.20/ 20
3. Color Vision Normal R. Jaeger No. L. Jaeger No
4. Face: Scars, deformities Normal
5. Eyes: Lids, pupils, cornea, reflexes, etc. Normal
6. Ears: Discharge, drums, etc. Normal
7. Hearing: R /15 Normal L /15
8. Nose: Deformities, etc. Normal
9. Mouth and Throat Normal
   Teeth and Gums Normal
10. Upper Extremity Defects Normal
11. Glandular System: Thyroid and lymphatics Normal
12. Heart ~~Norjam~~
    B.P.: S 150 D 90 Pulse Rate 80 Min. Arteries Normal
13. Lungs Normal
14. Abdomen: Scars, tenderness, masses Normal
15. Hernia: Complete, incomplete or tendancy toward No

16. Genitals

17. Rectal Normal

18. Lower Extremity and Spine Normal

19. Skin and Scars Normal

20. Joint and Joint Motion Normal

21. Neuropsychiatric Defects: Romberg, Finger to nose, etc. Normal

22. Blood Serology Chart Non Reactive
Blood Other Type O Positive

23. Urinalysis: Alb. Neg. Sugar Neg. Sp. Gr. Appearance Normal

24. Selective Service Status (if 4-F or 1-Y or separated from service, state reason)

25. X-Ray Report — Film No. Negative

26. Electrocardiograph Report and No. Negative

SUMMARY NON

RECOMMENDATIONS NON

PHYSICAL RATING: 1, 2, 3, 4 1

UNION RATING: "A", "B", or "C"

If "C", how much S.U seatime?

WAS THIS MAN NOTIFIED OF ANY
DEFECTS? YES ☐ NO ☒

MD

PHYSICIANS RECORDS CO. BERWYN ILLINOIS - SOUTH BEND IN

ORIGINAL ☐
or
ANNUAL RE-EXAM XX
NO. P.R. 141-72

SEAFARERS' WELFARE PLAN
PHYSICAL EXAMINATION REPORT

ADDRESS Box 439 Calle 2 Bl. 52
Fajardo Gardens, Fajardo P.
Port Puerto Rico Date 7-10-72 19

Name Julio Evans (LAST) (FIRST) (MIDDLE NAME, INITIAL OR NONE) Date of Birth 12-21-16
"Z" No. 111-669 SS. 051-16-7819
Rating Deck Age: 55 yrs.

PAST MEDICAL HISTORY:

Have you had any of the following (if so, when)?

Asthma No Heart trouble No Rheumatism No
Tuberculosis No Diabetes No Epilepsy No
Nervous or mental trouble No Stomach trouble No V.D. No
Other illnesses Hypertension
Prostatitis

INJURIES: Skull No
Back No
Extremities No

OPERATIONS T and A

I certify that the above answers are true and correct: Signature [signature]

PHYSICAL EXAMINATION:

1. Race Color Weight 121 lbs. Height 5' 7" ins. Temperature 97°
2. Vision: R.20/ 20 L.20/ 20 Corrected: R.20/ L.20/
3. Color Vision Normal R. Jaeger No. L. Jaeger No
4. Face: Scars, deformities Normal
5. Eyes: Lids, pupils, cornea, reflexes, etc. Normal
6. Ears: Discharge, drums, etc. Normal
7. Hearing: R 15/15 L 15/15
8. Nose: Deformities, etc. Normal
9. Mouth and Throat Partial adentia
Teeth and Gums
10. Upper Extremity Defects Normal
11. Glandular System: Thyroid and lymphatics Normal
12. Heart NSR, no murmurs ort thrill
B.P.: S 140 D 90 Pulse Rate 84 Arteries
13. Lungs Normal
14. Abdomen: Scars, tenderness, masses Normal
15. Hernia: Complete, incomplete or tendency toward None

16. Genitals Normal

17. Rectal Normal

18. Lower Extremity and Spine Normal

19. Skin and Scars Normal

20. Joint and Joint Motion Normal

21. Neuropsychiatric Defects: Romberg, knee jerks, tremors Normal

22. Blood Serology V.D.R.L. Non Reactive

Blood Other ~~HB. 96% 14.4 gms.~~
Blood Type- O Positive

23. Urinalysis: Alb. Negative Sugar Negative Sp. Gr. 1.023 Appearance Yellow-hazy

24. Selective Service Status (if 4-F or 1-Y or separated from service, state reason)

25. X-Ray Report — Film No.
CHEST: The heart appears normal in size and configuration.
The lungs are clear.

26. Electrocardiograph Report and No.
NORMAL

SUMMARY
No pathological findings in physical examination.

RECOMMENDATIONS
NONE

PHYSICAL RATING: 1, 2, 3, 4 Class: A Has seatime Rating: 1 year

UNION RATING: "A", "B", or "C" 2212

If "C", how much SIU seatime?

WAS THIS MAN NOTIFIED OF ANY SERIOUS DEFECTS? YES ☐ NO ☐

Wallace Jimenez, MD

ORIGINAL ☐
or
ANNUAL RE-EXAM XX
NO. T.R. 00-71

SEAFARERS' WELFARE PLAN
PHYSICAL EXAMINATION REPORT

ADDRESS
Box 430
San Pedro, Calif.

Port Puerto Rico Date 12-[illegible]-71

Name Julio Evans (LAST) (FIRST) Deck MIDDLE NAME, INITIAL, OR NONE Date of Birth [illegible]
Rating [illegible] "Z" No. 111-560 SS: [illegible]

PAST MEDICAL HISTORY:

Have you had any of the following (if so, when)?

Asthma No Heart trouble No Rheumatism No
Tuberculosis No Diabetes No Epilepsy No
Nervous or mental trouble No Stomach trouble No V.D. No
Other illnesses Hypertension

Skull No
INJURIES: Back No
Extremities No
OPERATIONS: T and A 16 yrs ago.

I certify that the above answers are true and correct: Signature Julio Evans

PHYSICAL EXAMINATION:

1. Race [illegible] Weight 121 lbs. Height 5'1" ins. Temperature [illegible]
2. Vision: R.20/ 20 L.20/ 20 Corrected: R.20/ [illegible] L.20/ [illegible]
3. Color Vision Normal R. Jaeger No. [illegible] L. Jaeger No [illegible]
4. Face: Scars, deformities Normal
5. Eyes: Lids, pupils, cornea reflexes, etc. Normal
6. Ears: Discharge, drums, etc. Normal
7. Hearing: R /15 Normal L /15
8. Nose: Deformities, etc. Partial septin
9. Mouth and Throat Normal
   Teeth and Gums Normal
10. Upper Extremity Defects Normal
11. Glandular System: Thyroid and lymphatics Normal
12. Heart NSR, no murmurs
    B.P.: S 145 D 90 Pulse Rate [illegible] Arteries [illegible]
13. Lungs Normal
14. Abdomen: Scars, tenderness, masses Normal
15. Hernia: Complete, incomplete or tendency toward None

16. Genitals Normal

17. Rectal Normal

18. Lower Extremity and Spine Normal

19. Skin and Scars Normal

20. Joint and Joint Motion Normal

21. Neuropsychiatric Defects: Romberg, knee jerks, tremors, etc. Normal

22. Blood Serology V.D.R.L. None Negative
Blood Other Blood Type-O Positive

23. Urinalysis: Alb. Negative Sugar Negative Sp Gr. 1.025 Appearance

24. Selective Service Status (if 4-F or 1-Y or separated from service, state reason)

25. X-Ray Report — Film No. [illegible]
CHEST: [illegible]

26. Electrocardiograph Report and No. 4125
Within Normal Limits

SUMMARY No pathological findings in physical examination.

RECOMMENDATIONS None

PHYSICAL RATING: 1, 2, 3, 4 Class: A Has seatime Rating: 1 year

UNION RATING: "A", "B", or "C"

If "C", how much SIU seatime?

WAS THIS MAN NOTIFIED OF ANY SERIOUS DEFECTS? YES ☐ NO ☐

ORIGINAL [ ]
or
ANNUAL RE-EXAM [X]
NO. P.R. 40-70

SEAFARERS' WELFARE PLAN
PHYSICAL EXAMINATION REPORT

ADDRESS: Box 430 Calle 9 Bloque O
52 Fajardo Gardens, Fajardo P.R.

Port Puerto Rico Date 2-2-70 19

Name Julio Evans
Rating Deck
Date of Birth 1-21-16
"Z" No. 111-669 SS: 051-18-3810
Age: 53 yrs.

PAST MEDICAL HISTORY:

Have you had any of the following (if so, when)?

Asthma No Heart trouble No Rheumatism No
Tuberculosis No Diabetes No Epilepsy No
Nervous or mental trouble No Stomach trouble No V.D. No
Other illnesses HYPERTENSION

Skull No
INJURIES: Back No
Extremities No
OPERATIONS: T and A 15 yrs. ago.

I certify that the above answers are true and correct: Signature Julio Evans

PHYSICAL EXAMINATION:

1. Race Weight 119 lbs. Height 52 ins. Temperature 37°
2. Vision: R.20/ 20 L.20/ 20 Corrected: R.20/ L.20/
3. Color Vision Normal R. Jaeger No L. Jaeger No
4. Face: Scars, deformities Normal
5. Eyes: Lids, pupils, cornea, reflexes, etc. Normal
6. Ears: Discharge, drums, etc. Normal
7. Hearing: R 15/15 L 15/15
8. Nose: Deformities, etc. Normal
9. Mouth and Throat Partial edentia
Teeth and Gums
10. Upper Extremity Defects Normal
11. Glandular System: Thyroid and lymphatics Normal
12. Heart NSR, no murmurs
B.P.: S. 160 D 100 Pulse Rate 80/min Arteries
13. Lungs Normal
14. Abdomen: Scars, tenderness, masses Normal
15. Hernia: Complete, incomplete or tendency toward None

16. Genitals Normal

17. Rectal Normal

18. Lower Extremity and Spine Normal

19. Skin and Scars No mal

20. Joint and Joint Motion Normal

21. Neuropsychiatric Defects: Romberg, knee jerks, tremors, etc. Normal

22. Blood Serology V.D.R.L. None Reactive

Blood Other Hb. 107,% 15.64 gms
Blood Type- O Negative

23. Urinalysis: Alb. Negative Sugar Negative Sp. Gr. 1.028 Appearance Yellow-Clear

24. Selective Service Status (if 4-F or 1-Y or separated from service, state reason)

25. X-Ray Report — Film No. J---174
CHEST: ESSENTIALLY NEGATIVE

26. Electrocardiograph Report and No. 3557
NORMAL TRACING

SUMMARY
No pathological findings in physical examination.

RECOMMENDATIONS NONE

PHYSICAL RATING: 1, 2, 3, 4 Class: A Has seatime Rating: 1 year

UNION RATING: "A", "B", or "C"

If "C", how much SIU seatime?

WAS THIS MAN NOTIFIED OF ANY SERIOUS DEFECTS? YES ☐ NO ☐

Walter [illegible]

M

A-63

ORIGINAL ( )
or
ANNUAL RE-EXAM (X)
NO. P.R. 225-68

SEAFARERS' WELFARE PLAN
PHYSICAL EXAMINATION REPORT

510 Calle Tabonuco
Puerto Real, Fajardo, P

Port Puerto Rico Date 11-12-68 19

Name Julio Evans Date of Birth 12-21-16
(Last) (First) (Middle name, initial, or "none")

Rating Deck "Z" No. 111-660 SS: 051-18-3810

Age: 51 yrs.

Past Medical History:

Have you had any of the following (if so, when)?

Asthma No Heart trouble No Rheumatism No

Tuberculosis No Diabetes No Epilepsy No

Nervous or mental trouble No Stomach trouble No V.D. No

Other illnesses Hypertension

Skull No

INJURIES: Back No

Extremities No

OPERATIONS: Tonsillectomy 42 yrs. ago.

I certify that the above answers are true and correct: Signature Julio Evans

Physical Examination:

1. Race White Weight 112 lbs. Height 51 ins. Temperature 37°
2. Vision: R.20/ 20 L.20/ 20 Corrected: R.20/ L.20/
3. Color Vision R. Jaeger No. L. Jaeger No.
4. Face: Scars, deformities Normal
5. Eyes: Lids, pupils, cornea, reflexes, etc. Normal
6. Ears: Discharge, drums, etc. Normal
7. Hearing: R 15/15 L 15/15
8. Nose: Deformities, etc. Normal
9. Mouth and Throat
   Teeth and Gums Partial edentia
10. Upper Extremity Defects None
11. Glandular System: Thyroid and lymphatics Normal
12. Heart Normal
    B.P.: S 100 D 100 Pulse Rate 82 Arteries
13. Lungs Normal
14. Abdomen: Scars, tenderness, masses Normal
15. Hernia: Complete, incomplete or tendency toward None

16. Genitals Normal

17. Rectal Normal

18. Lower Extremity and Spine Normal

19. Skin and Scars Normal

20. Joint and Joint Motion Normal

21. Neuropsychiatric Defects: Romberg, knee jerks, tremors, etc. None

22. Blood Serology V.D.R.L. None Reactive

Blood Other Hb. 107% 15.5 gms

Blood Type - O Positive

23. Urinalysis: Alb Negative Sugar Negative Sp. Gr --- Appearance Yellow- Clear

24. Selective Service Status (if 4-F or 1-Y or separated from service, state reason)

25. X-Ray Report – Film No. H---1332

CHEST: ESSENTIALLY NEGATIVE

26. Electrocardiograph Report and No. 3099

Sinus bradycardia

Within Normal Limits

SUMMARY

No pathological findings in physical examinatio

RECOMMENDATIONS NONE

PHYSICAL RATING: 1, 2, 3, 4 Class A Has seatime Rating: 1 year

UNION RATING: "A", "B", or "C"

If "C", how much SIU seatime.

WAS THIS MAN NOTIFIED OF ANY SERIOUS DEFECTS? YES ( ) NO ( )

M.D.

MP1 2512 6-63

DEFENDANT'S

EXHIBIT
U.S. DISTRICT COURT

22 ~~ID~~

PETER-CYRUS RIZZO, M. D., F. A. C. S.
PETER-CYRUS RIZZO, III, M. D., F. A. C. S.
140 EAST 54TH STREET
NEW YORK, N. Y. 10022

212 - PLAZA 5-6869

100 PARKWAY ROAD
BRONXVILLE, NEW YORK
914 - 337-1118

Mr. E. Moyles
17 Battery Place
New York, New York

Re: Houlio Evans
Vs: Calmar Steamship Company
Da: 5-21-68

Dear Mr. Moyles:

As requested, I examined Mr. Evans on 9-9-71. Following is a report of my examination and findings.

HISTORY: Patient works as a bosum and about three years ago, he injured his left knee. He was stretching wire on a hatch to the gantry. He lost his balance and jumped to clear space striking his left knee on the hatch. He continued to work, was in port at that time. He was seen at the next port he arrived at and was given light duty. He was also checked in Baltimore. X-rays were taken and he made FFD. The knee was swollen. His knee continued to bother him. The accident happened in May and about a month and a half later, he was on the West Coast when he struck the right knee when he tried to duck a wave. He says that he was unconscious for about 20 minutes. He was seen by a doctor in port. He was paralyzed in both legs and one hour later, he could not move the right leg and was taken by ambulance to the hospital and then returned to his ship. He has worked right along. He has had a period of treatments at Hudson and J. There has been no hospitalization. He lost time on and off and had two series of treatments at H. and J.

COMPLAINT: Pain in the left knee with tends to give way. He says that it tends to lock and then he has to stretch it out to have it feel good. He feels a little crack in the knee going up and down stairs, it hurts him. The right knee hurts also but not often, only with too much activity. He has no giving or locking of the knee.

EXAMINATION: Patient is a well nourished male of 54. He is 5'1'' and 120 pounds. He walks with a good gait. Squatting is with some tendency of limitation on the left. Hip movements are free. The left knee presents no synovitis or bursitis. He says that there is some pain in the supra-patella area at the extremes of movement. There is no instability of the knee joint. The patella motion is free. There is excellent quadriceps tone. Some crepitation is present in the knee with contracture of the quadriceps against resistance. Grinding test is negative. There is some palpable lipping along the tibial plateau. The right knee presents a similar finding. There is no synovitis or bursitis. Thereis good muscle tone. The grinding test is negative. Full extension and flexion and some crepitation with contracture of the quadriceps muscle. There is some palpable lipping along the tibia. The leg lengths are equal. The circumferance of the thighs and calves are equal at the same level. Circumference of the knees are equal at the same level.

COMMENT: At this time, the patient presents subjective complaints. The

e: Houlio Evans
age 2

mptoms suggest that there may be some arthritic involvement of both knees. I cannot make out any definite injury to a meniscus. There is excellent one of the quadriceps and full range of movement in both knees. It is my opinion that the patient is fit for duty and needs no special care or treatment.

Yours truly,

Peter-Cyrus Rizzo Sr., M.D.

CR:en

* * * * * * * * * * * * *

I think I should state to you that nothing I say to you is evidence or nothing Mr. Moyles says to you is
[14] evidence.

* * * * * * * * * * * * * * *

[17] As it happens, a little before nine, in
[18] dismissing all of the work with Mr. Evans, the mate mentioned the fact that the opening was there. So, a few minutes before nine, Mr. Evans knew about it. Then

* * * * * * * * * * * * * * * * *

anybody. And, there were risks to Mr. Evans. And, as His Honor indicated to you, following surgery, he had a heart attack. He is disabled now as a result of both of these conditions. So, I ask only that you keep an open mind and listen to all of the evidence, pay attention to Mr. Moyles just as you have to me. At the conclusion of the evidence, we will be allowed to address you again and review the evidence to you. Thank you very much.

THE COURT: Mr. Moyles.

MR. MOYLES: Thank you, Your Honor. Now, I would just like you to keep one thing in mind; that is, what Mr. Matthews says to you is not proof. The proof will come from the witnesses. But Mr. Matthews, as the Judge instructed you earlier this morning when we started, has the burden of proving his case by a preponderance of the evidence, to tip the scales in his favor. And, at the end of the trial, the Judge will give you more definitions and instructions as to what we mean as to preponderance of the evidence.

Now, bear this in mind, it is our contention that not every accident produces an injury. We want you to listen very carefully to what happened to Mr. Evans. We do not deny -- the defendant in this case does not deny Mr. Evans fell on May 21st or May 28th

1968. No question about it. He fell on the number 2 hatch, no question about that. He fell because he was doing his duty in stretching the wire. He did his job and he hit his knee. But Mr. Evans worked for six years thereafter on vessels. This will come out in the trial. We will prove to you that he worked for Sealand, which is a shipping company; he worked for Seatrain; he served on the Calmar. Now, we think it is sort of shocking that a six-year period goes by and we are now being asked to be held responsible for a fall to Mr. Evans. Mr. Evans has to prove that that fall resulted in this knee injury which he was operated on in 1974 in the United States Public Health Hospital in Staten Island.

There is going to be some medical terminology which will come out in this trial; things like hypertension, sinus bradycardia. The doctors will explain what these terms mean. We are going to prove to you that Mr. Evans has a long existing condition of hypertension; that he has had sinus bradycardia as far back as 1968.

It is for you to draw the conclusions from these facts as to how they apply to this case. And, at the end we are going to try to tie this thing for you so hopefully you will be able to make a fair decision.

Now we will introduce certain documents into evidence in the trial and again you will have to give them the weight pursuant to the Judge's instructions that you think they should be given in this trial.

We will introduce Mr. Evans' physical examination by the SIU; that's the union to which seamen belong.

We will introduce his sign-off physical subsequent to his injury to this knee, his left knee. Those documents will speak for themselves.

We will question Mr. Evans on certain aspects of these documents. But, we ask you to pay very close attention to Mr. Matthews' case because he has the burden. We are going to attempt to prove to you, and I think we will, to your satisfaction that there are other ways Mr. Evans could have had this weakness which would cause his knee to buckle. Dr. Mauer found a cartilage problem, the meniscus problem. We have this meniscus in the knee. They took out Mr. Evans' lateral meniscus in 1974.

Dr. Mauer's physical examination in September of 1971 was a finding of medial meniscus.

Dr. Rizzo's findings in December of '71 was chronic arthritis.

We are going to show you how you can have

chronic arthritis in your joints and that you can confuse arthritis with the meniscus problem. You are going to hear about a McMurray's test. You are going to hear that there are two aspects to the McMurray's test and not one, depending on how you apply the McMurray's test.

We will show you, in connection with this meniscus, if any, whether it was torn or injured as a result of this fall in May, 1968. We will ask you to pay very careful attention to these terms we use. We will try to develop this for you.

When you have all these facts put together, it is like a puzzle. We are confident you will return a fair verdict in this case. Thank you.

MR. MATTHEWS: I would like to call the plaintiff, Your Honor.

JULIO EVANS

was thereupon produced as a witness in his own behalf, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

THE CLERK: Please state your name for the record.

the relevant ground.

Q (By Mr. Matthews) What was the condition of these wire lines when you would go to secure them?

A These wires are kinked and twisted.

Q Is it necessary to remove the kinks before you secure the blocks?

A It is necessary.

Q Would you describe to the jury how you would go about doing this?

A When I am summoned by the Chief to come around to do the work by the whistle, it is already on the crane, so I take the wire from the deck and I throw it on top of the hatch, climb on top of the hatch and start stretching my wires, taking them off, walking sideways, looking all around, taking the kinks out of the wires; when this is all stretched, we hook it on the block.

Q Does the mate do something then?

A The mate then takes the slack in the wires of the crane block and secure that block tight.

Q Incidentally, when you're up on that hatch cover, how far off the deck are you approximately?

A Beg pardon, sir?

Q When you're up on top of the hatch cover where you go to stretch the wire, about how far are you off the deck of the vessel?

A I would say about four and a half feet.

THE COURT: Four and a half feet?

THE WITNESS: From the deck, yes, sir.

Q (By Mr. Matthews) How many times did you do that job on the CALMAR?

A I used to do that all the time, sir.

Q Every time the ship left port?

A Every time the ship left port.

Q For both cranes?

A For both cranes.

Q Did you always do this in the same manner?

A The same all the time.

Q In doing this, did the mate always operate the crane?

A He always was operating the crane.

Q Mr. Evans, was the CALMAR in New Haven, Connecticut, on May 21, 1968?

A Yes, sir.

Q Were you aboard the ship when she docked there that day?

A No, I wasn't.

Q Where were you?

A I had a little time off with my family.

Q When did you return to the ship?

A About two hours before sailing time.

Q That would be in the evening then?

A In the evening.

Q Who operates these cranes when the ship is working cargo?

A The longshoremen.

Q Were the longshoremen still working cargo when you returned to the ship that evening?

A Still they were working cargo.

Q And, at New Haven, was cargo being loaded into or discharged from the number 2 hatch?

A Cargo had been discharged.

Q Now, had you ever -- in doing this job before, Mr. Evans, had you ever secured a cable block without the hatch being completed covered?

A Never, sir.

Q When the CALMAR completed the loading or unloading at a port such as New Haven, what was your job as bosun?

A As bosun I had to secure the entire ship; have it seaworthy.

Q What does that involve?

A That means we have to place the men in each position to swing the boom. They got two men in the steel winch; two men in the runners, two men in the square guy; two men overlooking the cargo wire that come directly from the drum; from there on we start topping the set of gear which is forward of the hatch.

Q What do you mean by "topping"?
A Lifting them all the way up and have it clear so that the other boom on the crane can be secured in between both booms with wire or ropes or whatever.
Q Do you have other duties as well?
A I have to check, jump from place to place helping men in case they need it, helping with the gear, checking if there is any broken material, everything is in working condition and securing the hatch itself and continue on, if there is something that can be gone overboard with the ship.
Q Anything adrift, you mean, loose?
A Continue checking the deck department so the ship can go out to sea in good condition.
Q When you came on the CALMAR in March, did you have discussion with the chief mate concerning the securing operations?
A Yes, we talked.
Q Would you describe that conversation.
A He brought me to his room; he told me, "You know, the last bosun was fired. I want you to understand, see, when you're securing, see that you secure and tie things down. I depend on you to correct that part."
Q Did he tell you it was important to do the job fast? Was that the idea?

MR. MOYLES: I object, Your Honor.

THE COURT: What else did he tell you? Did he tell you he wanted you to do it rapidly?

THE WITNESS: He told me to do it properly; take less time in the securing.

Q (By Mr. Matthews) When did the longshoremen leave the CALMAR on May 21st, 1968, approximately?

A They left about 8:30 to 9:00 o'clock.

Q Did you have any conversation with the chief mate at that time?

MR. MOYLES: Objection, leading, Your Honor.

THE COURT: He can ask him if he had a conversation. Go ahead.

Q (By Mr. Matthews) Did you have a conversation?

A Yes, sir.

Q Did you discuss the work you were going to do?

A Yes.

Q Did he say anything to you at that time?

THE COURT: You can ask him what the conversation was.

Q (By Mr. Matthews) What was the conversation?

A He explained to me the number 2 hatch, the McGregory covering, they had difficulty; she was going to sail that way, to go ahead and secure.

Q Would you describe to the jury the manner in which you

went about securing that night?

A So, we started the number 3 hatch. We did the operation I explained before. From there on, went to number 2 and helped with the aft boom getting it ready to work on the crane. We had to keep them moving to number 1 because the crane is not ready; so, when we are working number 1, we're whistled to come to number 2; when I come to number 2, I come to secure those blocks.

Q Now, let me interrupt you for a moment. Which crane did you secure first?

A Number 3.

Q Then, did you do that in the same way that you had on all the previous occasions?

A All the time we used to work the same way, same time.

Q When you were summoned to number 2, where did the chief mate position the boom?

A It was on the top of the hatch.

Q Was it as it appears on this diagram, Exhibit 12? Take a look. (Shows to witness.)

A About that way.

Q So, the blocks were hanging down?

A Hanging.

Q Near the center of the number 2 hatch?

A That's right.

Q As you got up onto number 2 hatch, did you ----

MR. MOYLES: I object, Your Honor, to the statement rather than a question. There is no evidence at this point he was on the number 2 hatch.

Q (By Mr. Matthews) Did you get up onto the number 2 hatch?

A I got up to the number 2 hatch.

Q As you got up onto it, did you look aft?

A I looked all over.

THE COURT: You should stop leading now and ask him what he did.

Q (By Mr. Matthews) Would you tell us first what you saw as you looked?

A I took my wire that I have to stretch and started stretching and looking around, keep on working sideways, taking the wire off the cleat that were hooked up; once in a while when I'm in a sideways position, I noticed I was close to the opening; and, when that opening came up to my mind, I was already out of balance.

THE COURT: When the opening came up to your mind, I don't understand that.

THE WITNESS: I forget about the opening.

THE COURT: You forgot about the opening?

THE WITNESS: Yes.

THE COURT: How long had you been working on the particular hatch at that time?

THE WITNESS: At that time?

THE COURT: Yes.

THE WITNESS: I had already worked there that very moment.

THE COURT: Was it two minutes, fifteen minutes, five minutes?

THE WITNESS: Less than that.

THE COURT: One or two minutes?

THE WITNESS: About one minute.

THE COURT: Then you were on the side working sideways and you saw the opening and then what happened?

THE WITNESS: I already had lost my balance; was too close to it. So, holding the wire in one hand and trying not to pull me into the hatch, so I decided to jump and twisted my body around. I jumped and I cleared the other side.

THE COURT: You cleared the other side?

THE WITNESS: I reached the other side.

Q (By Mr. Matthews) How wide was that opening?

A I would say a little over five feet.

Q The hatch, you say was forty-five feet deep?

A It was about forty, forty-five feet deep.

Q How long had you been working at this overall securing operation that you have described to us since you had

talked to the mate?

A More than thirty minutes, sir.

Q What colors were the hatch coverings?

A They are painted black.

Q Behind the number 2 hatch back here (indicating) is there a structure?

A There is what we call the resistor house.

Q What color is that painted?

A They are painted black too.

Q Are there any windows or doors in the foreward end of that resistor house?

A Nothing.

Q This was night time, right?

A Correct.

Q Was the deck well lighted?

A It was fair.

Q Fair lighting?

A Yes.

Q Was there any light coming out of this opening in number 2 hold?

A No.

MR. MOYLES: I object, Your Honor. I don't see any relevancy to that.

THE COURT: He can answer. Go ahead.

A I said not that I noticed.

Q (By Mr. Matthews) How did you say the chief mate summoned you to come there?
A With the crane whistle.
Q What kind of an engine does the crane have?
A Diesel operated engine.
Q When the mate summoned you with the whistle, did you have any conversation with him at that time?
A Was not possible.
Q Why not?
A He was on top of the engine; he was on deck on top of the crane; the engines are running. We cannot talk.
Q Were the winches also in use?
A Number 1 winch was in use.
Q How were they powered?
A They were powered by steam.
Q Are those noisy?
A They are noisy.
Q If you have to give instructions during this securing operation, how do you do it?
A You have to signal and sometimes run and touch the person himself.
Q Use hand signals?
A Use hand signals.
Q Between the time when the mate told you that one of pontoon or wheels at number 2 were off the track and the

time you went on the hatch, I think you said it was some thirty or thirty-five minutes to stretch and secure those lines, were you concentrating your thought on anything?

MR. MOYLES: I object to the form of that question, Your Honor.

THE COURT: That's all right.

A I was concentrating on the securing of number 1. Beside, I was ready to go down on the deck to check on some of the top wires that are on the deck and not visible. When I was summoned by the whistle, I went right away to take care of it.

Q This equipment that you say you were checking, you would check as you go along, the winch and etc.; did you make a written list as to their condition or do you keep that in your mind?

A Those things have to be kept in mind to discuss with the mate as to the condition.

Q Can the head of that crane boom be moved from side to side?

A It can rotate 360 degrees.

Q Could the mate have positioned it over the deck so you could have stretched the tag line there?

MR. MOYLES: I object to that question, Your Honor.

A That could ----

MR. MATTHEWS: Wait a minute.

MR MOYLES: I object to what the mate could have done.

THE COURT: You can ask him whether the winch could be moved.

MR. MATTHEWS: That's what I did. I asked you whether it could be moved out there and whether the job could have been done out there if it had been?

THE COURT: Have you ever been a winch operator?

THE WITNESS: Beg pardon?

THE COURT: Did you ever operate a winch?

THE WITNESS: Yes, sir.

THE COURT: Do you know whether it could move?

THE WITNESS: Yes, it can move any place.

THE COURT: All right. Go ahead.

Q (By Mr. Matthews) Mr. Evans, after you landed on the other side of this opening, what did you do?

A After I landed, I twisted around and started to get up and went down again and held my knee. Then the chief mate came around and gave me some assistance and started working and moving me around.

Q Did your knee swell up?

A Swell up, yes.

Q Which knee was that?

A My left knee.

Q Were you able to put any weight on your leg?
A Not too much weight; but, as the time went by, I started.
Q Within a matter of minutes?
A Yes.
Q Did you perform any further duty that night?
A I finished the securing.
Q After the ship was secured for sea, what did you do then?
A The chief mate give me some liniment; rubbed some liniment and I went to bed.
Q Were you able to sleep that night?
A Very hard that night.
Q How did you feel? How did your knee feel the next morning?
A It was swelling and pain.
Q Did you perform your duty the next day?
A The best I could.
Q You say the mate had given you some liniment?
A Yes.
Q Did you use that?
A I used that.
Q What was the next port?
A The next port was Wilmington.
Q When did the ship arrive at Wilmington?

A Arrived one day between the 23rd.

Q When the ship arrived on the 23rd, were you sent to a doctor there?

A Yes, sir.

Q Did you later learn his name?

A His name was Dr. Teixido.

Q What was the condition of your knee when you saw Dr. Teixido?

A The knee was swelling and painful.

Q What did he do for you?

A He examined me; gave me -- told me don't put too much weight on my leg and gave me some hot pad and towel.

Q Did he give you any instruction as to what to do when you get on the ship?

A Not to put too much weight on the leg until -- sort of permit it to get better.

Q When you went back to the ship, did you go back to work?

A Yes, sir, I did.

Q Did you apply anything to your knee?

A I kept applying hot towels on my knee every time.

Q How long did you continue to do that?

A Oh, I continued that for a long time until -- now, I still am using hot towels.

Q Where did the ship go from Wilmington, Delaware?

A Baltimore.

Q Did you continue to work?
A I continued working, sir.
Q Did you have any difficulty in performing your duties?
A Yes, I had difficulties.
Q Is there a Marine hospital in Baltimore?
A Yes, sir.
Q Did you go there?
A Yes, I did.
Q What was your reason for going there?
A Still I was having difficulty; so I went to see a doctor.
Q Did the doctor examine you at the Baltimore Public Health Service?
A Yes, sir.
Q Did he permit you to return to the ship?
A He permitted me to go back.
Q Would you describe to the jury the progress of your left knee after you returned to the ship, at Baltimore?
A After that, the swelling started coming down; still the knee was hurting; but I noticed that the knee started giving up.
Q Giving up?
A Giving up on me; so I had no strength to hold me some time.
Q During this time, were you performing all your normal

duties?

A I was doing the best I could.

Q Were you required to remain on your feet all day?

A Chief mate gave me the opportunity to work according to the pain on my leg.

Q Now, as a bosun, Mr. Evans, are you required to work overtime?

A I am required.

Q Did you work overtime during this period?

A Yes, sir.

Q What generally did this overtime work consist of?

A Beginning, most of the work consisted of supervising and watching on the ballast, standby work for the longshoremen and shore guys.

Q Did you still have the trouble with your left knee giving away and buckling?

A I had that.

Q Did that continue, incidentally?

A That continued.

Q That continued right up to your operation at April?

MR. MOYLES: Objection, Your Honor; that is leading the witness.

THE COURT: Don't lead the witness.

Q (By Mr. Matthews) How often did this happen?

A That happened very often.

Q Did you ever fall down when your knee gave way?

MR. MOYLES: I object, Your Honor.

A I fell down.

MR. MOYLES: I object.

THE COURT: Objection is overruled. Did you ever fall down?

THE WITNESS: I fell down several times.

THE COURT: Several times?

THE WITNESS: Yes.

Q (By Mr. Matthews) When was the first time that you fell down when your knee gave way?

A I wasn't -- I was about the securing of the ship, number 1 hatch when we had bad weather; a big wave struck the ship; I tried to dodge it; my knee gave way and I fell down, striking my right knee on the top of the valve.

Q Do you recall the approximate date that was?

A That was sbout the 14th of June.

Q After your knee struck the valve -- which knee are you talking about?

A My right knee.

Q Your left knee gave way and your right kree struck the valve?

A Right.

Q How did your knee feel at that time?

A Very, very painful. I lost conscious for a little

while.

Q Then after you regained consciousness, were you able to get up?

A I was able to leave and walk back midship.

Q You went back midship?

A Yes.

Q What did you do?

A I finally found the ship mate and explained to him I had been hurt.

Q After that, what did you do?

A After that I walked around about twenty minutes; see, I walked around and tried to warm up enough; 12:00 o'clock, I went for my meal; when I came back I lay down.

Q How long did you remain in the bed?

A I wasn't able to get up for my 1:00 o'clock duty. I had to remain in bed until an ambulance picked me up at the next port of arrival.

Q Is that Richmond, California?

A That was Richmond.

Q That same night?

A That night about 9:00, 10:00 o'clock.

Q How did you feel during that time?

A During that time, the pain was terrific, nothing was able to touch me. I was filled with codeine until I reached the hospital.

Q Were you being treated by the mate?
A By the mate, I was treated.
Q You were taken by ambulance to a hospital?
A By ambulance.
Q Was that Kaiser Hospital?
A Kaiser Hospital.
Q What was done for you there?
A The doctor saw me there and put me in a stretcher there until I recovered; in the meantime, I was putting hot treatment about 4:00 o'clock in the morning. I thought -- I found out I was able to recover to put a little weight on my leg. The pain was easing up. I started walking around; and they sent me home in a taxi -- back to the ship in a taxi.
Q Did they give you some pills?
A They gave me pills.
Q Did they put anything on your right knee?
A My right knee, they put the hot pad.
Q Did they put Ace bandage on?
A Bandage.
Q You returned to the ship then?
A I returned to the ship.
Q Did you return to work?
A Returned to work the next morning at 8:00 o'clock.
Q Did you perform all of the jobs which were assigned

to you?

A I remember doing the best I could.

Q While you were on the CALMAR, after that, did you give yourself any treatment?

A I always used hot towels as recommended; and I buy my own electric pad for use on both knees.

Q After a while, were you able to walk normally on your right leg?

A Pain started.

Q What about your left knee during this period of time?

A My left knee always used to hurt me; it continued hurting.

Q When did you leave the CALMAR?

A CALMAR, I left it when the ship laid up in Baltimore.

Q Was that the 29th of August, 1968?

A August 29th.

Q You say the ship laid up?

A Laid up.

Q Did you seek any medical treatment for your knee?

A Yes, sir, I did.

Q Where?

A U.S. Public Health.

Q Here in New York?

A New York.

Q What was done for you there? This was on August 30th,

am I right?

A Yes. They treated me there, saw me. They gave me some shots of cortisone and they gave me a fit for duty slip.

THE COURT: They gave you a fit for duty slip?

THE WITNESS: Yes, sir.

THE COURT: After how long?

MR. MATTHEWS: Same day, Your Honor.

THE COURT: The same day?

MR. MATTHEWS: Yes. We have the records, Your Honor.

Q (By Mr. Matthews) What did you do after that?

A I went back to Puerto Rico.

Q When did you next return to sea?

A About three months later I shipped out.

Q Was that in November?

A November.

Q On the GATEWAY CITY?

A GATEWAY CITY.

Q Your job on the GATEWAY CITY was what?

A As a bosun.

Q What was your reason for staying on the beach so long?

A I had a bad knee.

THE COURT: You had what?

THE WITNESS: My knee was hurting all the time.

Q (By Mr. Matthews) During this period when you were not working, did you notice any difference in your knee?
A During all this time when I was not working, the knee used to have oh, so pain.
Q And, when you went back to work as a bosun on the GATEWAY CITY, did your knee bother you?
A Continued to bother me.
Q What seemed to give you the most trouble?
A When I used to go up ladders and down ladders and when I used to work in a squatting position.
Q Did you get any medical treatment when you were aboard that vessel?
A I continued using my hot pad, used to carry a hot electrical pad with me.
Q Did your knee -- your left knee give way at all while you were on the vessel?
A It gave way very often.
Q Did you miss any time from work while you were on the GATEWAY CITY?
A No, sir.
Q Did you seek any treatment for your knee after you left the GATEWAY CITY?
A I believe I did; I went to the hospital for it.
Q You say the hospital; do you mean the out-patient clinic?

A The out-patient clinic.

Q Here in New York?

A Yes.

THE COURT: What day was that?

MR. MATTHEWS: I'm about to get to it, Your Honor. It's Exhibit 8; and, the date is May 2nd, 1969.

According to the record here that I have, Mr. Evans, it states they took X-rays, they gave you aspirins and they told you to use local heat; does that sound correct?

A That's right.

MR. MOYLES: May I see that, Mr. Matthews.

(Document handed.)

Q (By Mr. Matthews) After you left the GATEWAY CITY, were you on the beach for another three ~~weeks~~ months?

A Yes, sir.

Q How did your left knee feel during that time?

A The left knee always hurt. When I left the ship, it was hurting all the time; but during the time I stayed home resting, the knee started to recover.

Q Did you work on various other ships during the remainder of 1969 and 1970?

A Yes, sir.

Q What experience did you have with your left knee during that time?

A Then I noticed that the knee started locking up on me when I was working logs or in a squatting position.

THE COURT: What do you mean by locking?

THE WITNESS: Getting in such a way I cannot move it any more.

Q (By Mr. Matthews) What do you do then?

A You would have to sit down, relax and look for a way to stretch it; and then it started working normal again.

Q During that time in between ships, did you spend some months on the beach?

A Yes, sir.

Q Did you continue with this hot towel and the heating pad you told us about?

A I always carry one with me aboard ship.

Q Did you sail as bosun on the SEATRAIN DELAWARE beginning June 16, 1970?

A Yes, sir.

Q Did you have any problem with your knee on that ship?

A That ship, I started to suffer again from my knee; and, I went for treatment into the hospital.

Q When you say the hospital, are you referring to the out-patient clinic here in New York?

A Out-patient clinic.

Q The record indicates that you were there on July 22nd of 1970.

A That's right.
Q Was that while you were on the SEATRAIN DELAWARE?
A Yes, sir.
Q According to this, they gave you some medication.
A Yes, they gave me some tablets.
Q They told you to continue with hot soak.
A Continue with the hot treatment.
Q Did they let you go back to the ship?
A Yes, I went back to work.
Q Now, how long did you continue to work on the SEATRAIN DELAWARE after that?
A I continued to work until I was not able to work no more on account of my knee.
Q According to the record, you returned there on September 16, 1970, to the Public Health Services?
A Correct.
Q I think you were discharged -- you left the SEATRAIN DELAWARE when, September 17th; is that correct?
A That's correct.
Q When you returned to the Public Health on September 16, 1970, what did they do for you?
A This time they recommended whirlpool.
Q According to this, again, according to the records both from another exhibit we have from San Juan you were under treatment from September 16th until October 21st of

1970?

A Yes, sir.

Q Did this treatment give you any relief from the pain?

A That treatment was very good.

Q Mr. Evans, since leaving the SEATRAIN DELAWARE, have you sailed as bosun?

A I gave up sailing bosun; it was causing too much strain on my leg; so I decided to ship as an A.B.

Q Did you sail after that as A.B.?

A I did.

Q Did you find, from your experience, you were finally able to perform the duty of able-bodied seaman?

A I was able to do it with more better jobs as A.B. I didn't have to use my legs so much. So, I decided to ship out as A.B.

Q Part of an A.B.'s job is to stand and watch the wheel or lookout?

A That's right.

Q Now, did you continue to give yourself treatment on the ships after the SEATRAIN DELAWARE?

A Yes, sir.

Q Did you seek any further treatment from the Public Health Service for your knees?

A After that I didn't seek any more treatment. I had the treatment already here; a few aspirins once in a while;

and, I continued using them until now.

Q In other words, you didn't go back to the Public Health Service for a long time?

A Right, long time.

Q When was the next time that you went to the Public Health Service to get treatment for your knee?

A After -- I was in to Staten Island to get treatment for my prostate gland.

Q Would you tell the jury when that was?

A That was 1968, about April.

Q Mr. Evans, slow down for a minute, okay? What year was it?

A '74.

Q This year?

A This year.

Q You say you were sent to Staten Island by the Clinic in Puerto Rico?

A By the Clinic in Puerto Rico.

Q What was the purpose of your coming up here?

A I was having some prostate gland trouble. The doctor in Puerto Rico thought an operation was necessary. So finally the Clinic up in Staten Island showed no operation was needed; but in the meantime I was having the same trouble with my knee. Then, I asked for examination on my knee to see if I was able to find some kind of help. My

first examination was done by two doctors; the second examination was done by a staff of doctors where six of them examined my knee and recommended my operation to correct cartilages.

Q You are talking about your left knee?

A Left knee.

Q Did you agree to submit to surgery?

A I agreed to submit to surgery.

Q Were you given a thorough physical examination before surgery?

A Yes.

MR. MOYLES: I object. I don't think this witness is capable of testifying as to whether it was thorough or not.

Q (By Mr. Matthews) The date of your surgery was April 5th, 1974?

A Yes.

Q Were you given an electrocardiogram before the surgery?

A Yes, sir.

Q Did you experience any difficulties following your surgery of April 5th?

A Following my surgery, I had trouble passing my water; then, they put me to pass my urine through a tube.

Q How long did you have that?

A I had that tube about twelve days. In between that

about ten days later, about 4:00 o'clock in the morning, I was losing my breath. I reported that to the nurse that I was losing my breath; I was having chills and fever; after that they put me in observation in a room with all kinds of machinery there. They told me I had a heart attack.

Q They put you in intensive care?

A Intensive unit.

Q Now, when were you discharged from Staten Island Public Health Service?

A I was discharged.

Q Was it on the 10th of May?

A About the 10th -- about the 10th of May.

Q How did your knee feel at that time?

A I was in a wheelchair. When I left, I had to use a cane.

Q Now, you are not using a cane any more?

A I am not using a cane.

Q Have you been getting treatment down in Puerto Rico?

A I have been getting treatment, having appointments for future treatments.

Q Tell me, Mr. Evans, before May 21st of 1968, when you were injured on the CALMAR, did you ever have any knee problem before that?

A I never had any problem.

Q What was your general physical condition at that time?
A I was in very good physical condition.
Q Were you strong?
A Was very strong.
Q You moved quickly?
A I was able to climb up the trees.
Q How does your knee feel at the present time?
A The knee, it don't lock any more.
Q It doesn't lock any more?
A I cannot go up the steps. You have to go one at a time, one leg. I cannot go up neither can I go down; any rough movement hurts.
Q You are saying if you go up steps you have got to put both feet on the same step?

MR. MOYLES: I object to his characterization.

MR. MATTHEWS: Could he demonstrate?

THE COURT: I think you are recapping what the witness has said already.

A I have to put my right leg, carry my weight and stand still and put my right leg and carry my weight and put the weight on my left leg.
Q (By Mr. Matthews) Mr. Evans, we have certain figures on an exhibit which we can go into later, showing base pay for a bosun and for an able-bodied seaman at different periods of time. Would you tell the jury what is included

in the base pay? In other words, what work do you do for your base pay?

A Work forty hours a week.

Q If you work more than eights hours in one day, do you receive overtime?

A That would be overtime.

Q And, if you work on Saturdays, Sundays or holidays, do you receive something called premium pay?

A That's a special rate premium overtime, they call it.

Q On an average now, about how many hours combined overtime and premium pay would you average per month during different shifts?

A At the present time would be one hundred twenty-five, one hundred fifty.

THE COURT: One hundred fifty what?

THE WITNESS: Hours.

Q (By Mr. Matthews) How would that be divided as between the overtime and the premium?

A Beg pardon? Repeat the question, please.

Q How much of that would be premium pay and about how much overtime?

A Premium pay would be about seventy-five hours a month.

Q In addition to that, do you receive vacation pay from the union?

A Used to receive vacation pay for that.

MR. MATTHEWS: May I lead on this, Your Honor? I have checked the figures.

THE COURT: How much were you getting base pay in January and February of this year?

THE WITNESS: My base pay right now?

THE COURT: Yes.

THE WITNESS: I'm sorry, I can't tell you right now.

THE COURT: Was it fifteen hundred to a thousand dollars a month?

THE WITNESS: It's about fifteen hundred dollars a month now.

THE COURT: That's base pay?

THE WITNESS: Base pay included with the overtime.

THE COURT: Are you working now?

THE WITNESS: No, I'm not working.

THE COURT: You have been without work for how long?

THE WITNESS: Since the time -- from the time I started in the hospital.

THE COURT: You are living in Puerto Rico?

THE WITNESS: Puerto Rico.

THE COURT: Your family lives in Puerto Rico?

THE WITNESS: Yes.

THE COURT: Your family has always lived in Puerto Rico?

THE WITNESS: Some of my sons are here.

THE COURT: What about your wife?

THE WITNESS: My wife is in Puerto Rico.

THE COURT: She has been there for how many years?

THE WITNESS: She's been there all the time.

MR. MATTHEWS: Your Honor, as far as that question is concerned, I would have gotten into it before, Mr. Evans' first wife died in 1949. So his present wife is living in Puerto Rico; is that right?

THE WITNESS: Yes.

THE COURT: When did you get married again?

THE WITNESS: I'm sorry, I got married a couple of years later.

THE COURT: 1951?

THE WITNESS: Yes.

MR. MATTHEWS: There was one question I left in the air.

THE COURT: Go ahead.

Q (By Mr. Matthews) On this vacation pay as an able-bodied seaman, you get one hundred dollars per month?

A One hundred dollars for A.B. and one hundred twenty-five dollars for bosun.

MR. MATTHEWS: I think actually it is one hundred sixteen dollars sixty-six cents, Your Honor, for bosun.

THE COURT: All right. Go ahead.

MR. MATTHEWS: Your Honor, do you intend to take any recess before cross-examination?

THE COURT: No. We are going straight through.

MR. MATTHEWS: Your Honor, at some time within the next half hour, could we put the doctor on?

THE COURT: Yes.

CROSS-EXAMINATION

BY MR. MOYLES:

Q Mr. Evans, when you went to the U.S. Public Health Service at Huston Street, did you give them a background or history as to when you incurred these injuries to your knee or got these injuries to your knee?

A I believe I did.

Q The doctor would sit there, would he not, and say, "Mr. Evans, give me a little bit of your background and case history; your age, how do you feel generally and your health," and things like that?

A Usually they have the record there all the time being

in the hospital, U.S. Public Health.

Q Yes, but when you went there because of the knee injuries, you had to tell them when they happened, didn't you?

A Yes, sir.

Q You have said now that one occurred on May 21st, 1968?

A That's right.

Q The other one occurred, I think, June 14th, 1968?

A That's right.

Q The left was in May; the right is June?

A Correct.

Q Would it surprise you that the record of August 3rd, 1968, U.S. Public Health Service, Orthopedic Clinic, West Huston Street, states left knee injury, one month prior to Memorial Day; right knee injury on Memorial Day?

A I don't recall.

Q I would ask the Court to take judicial notice that Memorial Day, 1968, was May 30th.

MR. MATTHEWS: Your Honor, is there any question in this case that it happened on May 21st?

THE COURT: I don't know. All of these documents are in evidence. You can use them for argument to the jury.

Q (By Mr. Moyles) Mr. Evans, you have been sailing, I think you testified, since around 1942?

A Beg your pardon?

Q You have been going to sea since 1942?

A 1941.

Q Then you had a two and a half year period off?

A Yes, sir.

Q Were you in construction work?

A Building construction, rigger jobs mostly.

Q Rigger jobs?

A Yes.

Q Would you explain to me what you mean by rigger jobs or construction?

A Rigger, assist the crane operator to move the cargo from one place to the other. We specialized in tying up and securing the cargo so it can be moving the crane safely. Rigger consists of tying up and securing.

Q Then you went back to sea in 1944?

A That's right.

Q You sailed aboard quite a few vessels since then, haven't you?

A Yes, sir.

Q Isn't it true in 1954 you had a claim for a sacro-iliac problem?

A 1944?

Q 1954.

A Specify it.

Q Did you sail aboard a vessel called the STEEL NAVIGATOR?

A Yes.

Q While you were aboard that vessel, did you make a claim for a sacroiliac -- a sacroiliac claim?

A That's right.

Q In 1959, while you were still aboard the STEEL NAVIGATOR, did you complain again about your sacroiliac strain?

A That's right.

Q Then in June of '55, you also complained about sacroiliac strain?

A Excuse me; could I ask you a question? That means pain in the back?

THE COURT: Yes.

A That's right.

Q (By Mr. Moyles) Then 1956 you sailed on a vessel called INES.

A Yes.

Q Did you, while on that vessel, have medical problems or turn yourself in to any doctor?

A I can't remember.

Q Would it surprise you if the record showed you had an infectious disease on August 7, 1956.

MR. MATTHEWS: I don't see the relevancy of

this.

THE COURT: That's all right.

A I don't remember that.

Q In 1958, again, you complained about chronic condition, possible strained ankle while you were still aboard the INES.

A I remember that.

THE COURT: What year was that?

MR. MOYLES: That was 1958 or 1959, Your Honor.

THE COURT: A sprained ankle.

MR. MOYLES: And also sacro sprain.

THE COURT: All right.

Q (By Mr. Moyles) Also you sailed aboard a vessel called the ROBERT SHERWIN in December 1960?

A Correct.

Q Did you make a complaint then for bursitis?

A I have made complaints about bursitis; I don't recall it was on that ship; I don't remember.

Q Did you then sail aboard a vessel for the Ishmael (phonetic) Line on the APPRENTICE, I think it is. While you were aboard that vessel, did you complain of infectious disease?

A It could be. I don't recall.

MR. MATTHEWS: I don't understand the relevancy of this.

THE COURT: The witness testified earlier he was in good health all of the time and at the time of the injury and that he had no injury or complaint. I think counsel is now in a position to show that is not true. Go ahead.

Q (By Mr. Moyles) In 1963, while you were still aboard the APPRENTICE, did you complain of bruised shoulders and a strained ankle?

A Will you please repeat the question.

Q In June, 1963, and January, 1963, while sailing aboard the APPRENTICE, did you complain about having bruised shoulders and a strained ankle?

A That I don't remember.

Q Did you sail in 1964 aboard the SEATRAIN vessel NEW JERSEY?

A I sailed on the NEW JERSEY; I don't recall the time.

Q You don't recall the time?

A No.

Q Do you recall that on July 18th, 1964, you complained of severe cold and pain in your chest?

A That happened so often; it's hard to.

Q You say severe pain in your chest happened quite often?

A Cold every day.

Q Let's talk about the pain in the chest. You get them

quite often?

A No, sir.

Q You didn't have them?

A No, sir.

Q You might have complained about them in 1964?

A Might have complained; I can't recall I had pain in the chest.

Q You do recall sailing aboard one of the SeaTrain vessels, that on August 4, 1965, you made a request for check up for high blood pressure?

A Yes, sir. Could be. I been checking high blood pressure.

Q Then on May 16, 1966, while sailing aboard the SeaTrain's NEW JERSEY, you again had slight chest pain?

A I can't recall that.

Q You don't recall that?

A No.

Q Then in 1968, you had the situation on the 21st of May and then the 14th of June about the knees that we are talking about in this case, correct?

A Would you repeat that, please?

MR. MOYLES: Let the record show here the documents I am showing are the injuries which are before this Court.

THE COURT: There is no dispute about that.

Go ahead.

Q (By Mr. Moyles) Then on September 14, 1970, you were sailing aboard the Seatrain's DELAWARE?

A Correct.

Q At that time, didn't you complain about contusion in the knee, prostatitis?

A The record must show my history.

Q I am asking the question.

A They are in the Public Health.

Q Did you sail aboard a vessel, the FAIRLAND?

A Yes, sir. I did.

Q And, did you complain of illness on July 13, 1971, of prostatitis?

A Yes, sir.

Q Then you were sailing aboard -- I can't make that out -- A-R-I-Z-P, I think a SeaLand vessel, did you sail aboard that vessel in September, 1972?

A Yes.

Q Did you complain on September 4, 1974, while on that vessel that you had headaches?

A I know I had headaches; I can't recall.

Q Did you then sail aboard a vessel, the JACKSONVILLE in August of 1973?

A I can't remember the date.

Q You can't remember sailing on the JACKSONVILLE?

A That's my history; I can't remember.

Q I asked you, did you sail on the JACKSONVILLE?

A Yes.

Q Do you remember complaining of severe headaches on August 19, 1973, on the JACKSONVILLE?

A Yes.

Q And now, Mr. Evans, when you go aboard a vessel for different companies, whetner it be the Calmar or SeaTrain Lines or the SeaLand Line, do you take an on-board physical sign on for each voyage?

A Sometimes we take it when we go on voyage.

Q Sometimes you don't?

A Sometimes we don't.

Q Do you take an annual physical for the SIU, Seafarers' International Union?

A Yes, sir.

Q When you take those annual physicals, do you give the doctor your full case history?

A Yes, sir.

Q So, you tell him what has been wrong with you, what has not been wrong with you?

A Yes, sir, but they look.

Q Do they give you electrocardiograms?

A Yes, sir.

Q Do they X-ray your chest?

A Yes, sir.

Q Do they ask you generally what your health is?

A No, they got limited examination.

Q But, you have to sign that examination, don't you? You have to sign that examination on the form, the SIU form?

A Yes.

Q Now, you signed aboard the CALMAR on around July 11, 1968, didn't you?

A Did I sign for sailing?

Q You signed back on for sailing around that time?

A I did.

Q So the jury understands, isn't it true vessels have what they call eastbound voyages and westbound voyages?

A That's right.

Q You sign on or off those particular voyages?

A Yes.

Q You don't sign on and stay on. You sign for each of those voyages; is that correct?

A That's right.

Q Before each voyage, with some steamship companies, you are given a medical examination, are you not?

A Very brief.

Q That's not my question. You are given a physical examination by certain companies; is that correct?

A You are.

Q You have to certify or sign the form; isn't that correct?

A Sometimes we do.

Q Now, do you recall that on July 11th, 1968, you signed an on-board physical for the Calmar Steamship Co.?

(Handed document to witness.)

A I have to put on my reading glasses. Yes, that's my signature there.

MR. MOYLES: May we have this marked the next number?

THE COURT: Hasn't that been already admitted in evidence?

MR. MOYLES: We stipulated it is admitted. We didn't give it a number.

THE COURT: Give it a number.

MR. MATTHEWS: I think we've got a 14. We don't have a 15.

THE COURT: Start in with 20.

THE CLERK: Defendant's Exhibit 20 marked for identification.

THE COURT: Did you want to change your answer?

A I should like to explain about these types of examinations.

THE COURT: All right.

MR. MOYLES: Your Honor, please.

THE COURT: You can ask the question. Your lawyer will ask the question.

A All right.

Q (By Mr. Moyles) Now, Mr. Evans, when you had this physical examination on July 11th, 1968, that's almost a month after the alleged knee injury of June 14th, a month and a half, almost two months ----

THE COURT: I think you ought to ask him the question without the long windup; that goes for both of you. Just ask him the questions.

Q (By Mr. Moyles) Did you complain to the doctor that you had knee problems so they would note it on this physical?

A I didn't complain.

Q Did you tell him? He asked you for history of previous injuries?

A No, sir.

Q How did he know you had malaria in 1941?

A He asked me if I had malaria; I had.

Q He asked you specifically if you had malaria?

A Any disease, anything you stay in the hospital.

Q Mr. Evans, isn't it true the doctor asked you to give your medical history, whether you had any problems or any disease or any operation?

A Whatever questions he asked, we answered. That's a couple of minutes. So, we sign without looking at it because it's routine.

Q You had just been injured, hadn't you, aboard the same vessel within a month and a half period prior to this?

A That was -- there were records, all of the hospital records; that was routine examination for making this.

Q Mr. Evans, it is routine now to you. You have just told this jury about the pain you were going through and how you were administering to yourself to relieve that pain, including buying a heating pad?

A The doctor didn't ask me.

Q The doctor didn't ask you about history of previous injuries?

A What he asked, I answered.

Q How would he know you had your tonsils and adnoids out?

A He asked for it.

Q As a matter of fact, the record talks about extremities; it says, "negative." Did you tell him you were having trouble with your knees because you were injured aboard this vessel?

A I don't remember telling him that.

Q You take annual physicals with the SIU?

A Yes.

Q When you take these examinations, do they ask you to

give your history?

A They may, a few questions.

Q They ask you questions like: "Did you ever have hypertension"?

A They give you electrocardiogram every time.

Q They take your past medical history?

A They make the questions and I answer them.

Q You sign, don't you, that the above answers are true and correct. You sign your signature. I will show you this document.

(Handed to witness.)

Is that your signature, Mr. Evans?

A Yes, sir.

Q Is that your signature?

A It is.

Q Is that your signature also, Mr. Evans?

A Yes.

Q Is that your signature, Mr. Evans?

A That s right.

(Continues handing documents to witness.)

Q Again, Your Honor, these are part of the documents we stipulated to.

THE COURT: They may be admitted.

Q (By Mr. Moyles) Mr. Evans, did you have a physical

by the Seafarers' Welfare Union in September, 1973?

A I don't recall that date.

Q On or about?

A Please repeat the question.

Q On or about September 13th, 1973, did you have a physical by the SIU?

A We have annual physical examinations.

Q I just asked you, please, answer my question. Did you have an annual physical on or about September 13, 1973?

A I said I had.

THE COURT: He had the annual one. He doesn't remember the exact date.

Q (By Mr. Moyles) Would it surprise you if I told you that annual physical that you certified that the above answer was true and correct that says: "Skull, no, back, no, extremities, no."

A I just answered the questions they asked me.

Q Why did you say "no" if your knees were bothering you?

A Because they do the examination; they make the questions; they do whatever they have to do.

Q You have told us you had this long history of your knees bothering you going back to May of 1968.

A I have told that to U.S. Public all the time.

Q Don't you tell your union the truth?

A See, it's routine from my understanding of the

different setups in the union because they have the history in the Public Health all the time.

Q Do you always sign statements that are incorrect then?

A Most of the sailors sign that just in a hurry.

Q Is this statement true or fiction?

MR. MATTHEWS: Your Honor, I object to it.

THE COURT: A lot of this is argumentative. You have covered that. Let me ask you a question or two.

Q (By the Court) You were made fit for duty on several times by the Public Health. Then you claim you were still sick and took vacations?

A Yes, sir.

Q Also whenever you signed on a vessel, you told them you were in good shape. Was that to be able to get the job?

A That was to build up some relation in the company.

Q When you were working, did you ever take time off or did you get full time and your regular pay and overtime pay during the entire period you were working on these vessels?

A Will you please repeat.

Q You worked quite a bit of time since 1968 to 1973. Did you take any time off while you were working or did you work your full shift?

A I used to work all of the time.

Q You got your regular pay and your overtime pay?

A Yes, sir.

THE COURT: All right.

Q (By Mr. Moyles) Mr. Evans, I have the physical and you identified your signature. They cover 1970, 1972, 1973; and they state on illnesses: "Hypertension and prostatitis." Your signature, of course, appears thereunder. Have you ever had a history of hypertension?

A I've been taken care of by Public Health sometime.

Q Do you understand what the word hypertension means in layman terms?

A High blood pressure?

THE COURT: Do you have a doctor who is going to testify?

MR. MATTHEWS: I do, Your Honor.

THE COURT: I think you have covered it enough so the orthopedic witness can testify.

MR. MOYLES: I don't waive my right to bring him back on?

THE COURT: No. I thought you ought to have the privilege of interrogating this man on his physical before the doctor testified.

MR. MOYLES: All right.

THE COURT: You can step down. You can put the witness back on.

(Plaintiff leaves witness stand)

MR. MATTHEWS: Call Dr. Mauer.

IRVING MAUER

was thereupon produced as a witness in behalf of the plaintiff, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

THE CLERK: Please be seated. State your name in full and spell your last name.

THE WITNESS: Irving Mauer, M-a-u-e-r.

THE COURT: What is your occupation?

THE WITNESS: I am an orthopedic surgeon.

THE COURT: Are you duly licensed in the State of New York?

THE WITNESS: I am.

THE COURT: Are you certified?

THE WITNESS: I am.

THE COURT: Ladies and gentlemen, Dr. Mauer is a duly licensed and certified orthopedic surgeon who devotes his entire time to that particular branch of medicine and surgery. His qualifications as an orthopedic surgeon have been admitted by all counsel.

Doctor, will you tell us what the field of

orthopedic surgery is?

THE WITNESS: Orthopedic surgery is that branch of medicine which specializes in treating and fixing things that go wrong with the moving parts of the skeleton, that means bones, joints, the muscles and the nerves and the skin that covers over the bones and joints; that includes the extremities as well as the spine.

THE COURT: Did you examine Julio Evans?

THE WITNESS: I did, sir.

THE COURT: Did you examine him for treatment or for testimony?

THE WITNESS: For testimony.

THE COURT: All right. Dr. Mauer is being called as an expert. Go ahead, Mr. Matthews.

DIRECT EXAMINATION

BY MR. MATTHEWS:

Q Doctor, was it at my request you examined Mr. Evans?

A Yes.

Q How many times have you examined him?

A I examined him twice; once on September of '71 and the second time yesterday.

Q Did you obtain a history from the patient?

A I did.

Q What was that history?

A He told me that he was injured on the Calmar Steamship Co. vessel about three and a half years ago; that was three and a half years prior to September, '71, when, while working on the ship, he found himself working on a partially opened hatch which was usually not open; that he began to fall and in order to save himself from falling down the hatch, he had to jump, and that when he jumped, he struck his left knee against the hatch; that he injured his knee; he was sent for medical care by the shipping company; but that he was able to continue work; but there was severe pain in the left knee.

He told me several weeks later his left knee gave away and that he fell and struck his right knee.

He told me that he still, as of September, '71, had pain in the left knee; that the left knee gave way and that he had difficulty in working in the squatting position.

Q Doctor, did you conduct a physical examination at that time?

A I examined -- I conducted an orthopedic examination.

Q Orthopedic examination?

A Yes.

Q Would you describe the findings on your orthopedic

examination?

A On the orthopedic examination I found that the left knee did not bend completely when compared with the right; that the lining of the knee joints were thickened both on the right and on the left.

I felt the knees themselves, the inner lining of the knee joints were thickened. I found that when the knees were straightened and bent, I found crepitation or grating or lateral retention indicating sensation.

I found the five measurements were equal by lateral. And, I found tenderness on the inner side of the joint; that is, this side of the joint on the left side with a positive McMurray sign on the left. A positive McMurray sign is a certain maneuver that one goes through when one tests the knee in which the leg is bent -- the position is straightened out and turned at the same time in order to find whether the inner mechanics of the knee are working properly. Normally when you do this, the knee straightens smoothly. When there is something wrong with the inner mechanism, you feel something snap inside the knee joint. That's called a positive McMurray sign.

Q You found that snapping, Doctor?

A On the left side.

Q Is that a recognized orthopedic test?

A Yes.

Q Is it specifically for this condition that you have talked about, internal derangement?
A Yes.
Q You mentioned a thickening of the joint line. What is the significance of that to you as a doctor?
A This means there is something going on in the knee; that there is swelling or a reactive situation going on inside the knee.
Q I think you also said that you found crepitation or grating; is that correct?
A That's correct.
Q What is the significance of that to you as a doctor?
A This went along with the thickening and the swelling of the lining of the joint. When this lining moves, then sometimes you can feel or hear the strange noise.
Q Now, doctor, did you make a diagnosis at that time ----
A Yes.
Q In September?
A Yes.
Q What was your diagnosis?
A I felt the patient had internal derangement of the knee. I felt he tore one of the cartilages in the knee joint.
Q Is there more than one cartilage?
A Yes, there is a medial and a lateral. There are two

compartments of the knee joint. This is the medial side, the one towards the other side; and the lateral side is the one toward the outer side. I felt he tore the inner one.

Q Are the findings similar one to the other?

A Yes, they are quite similar.

Q It was your opinion at that time that he had torn the inner one; is that correct?

A That's right.

Q Did you have an opinion as to whether that condition was related to the accident of May 21st, 1968?

A Yes.

Q What was that opinion?

A I felt it was due to the accident.

Q Doctor, what is the function of the knee joint?

A The knee joint is the second largest joint in the body. It is the joint between the thigh bone and the leg joint. It's the joint that bends or extends. It doesn't go in a circle. It has a very wide range of motion. The knee joint is just a hinge. It goes up and down. It enables the level of the leg to get from one place to another; to climb steps; to squat; to sit; to give strength in running and walking and all other activities.

Q Now, how does an injury such as the one that you found, the torn cartilage, how does that affect the

functioning of the joints?

A Well, the knees are quite a complicated joint with all sorts of mechanisms in the joints. That is not simply one bone against another bone. One bone is held against another by ligaments. These ligaments and the capsule, which is all part of the ligaments, maintain the contact. The contact is buffered by the articular artery or joint gristle of the joint; and, between the two bones, there are bones and also these meniscus or semilunar cartilages widen the cavity of the joint and make up for a special kind of motion in the knee joint which is called the screw hole motion. It is a little complicated. When you fully extend the knee, it turns. That's how the knee works and the cartilages of the meniscus take part in this motion. They buffer the motion in the knee joint; and they take hold the screw hole mechanism. They are internal mechanism of the knee joint. When these are gone, when there is damage is to these cartilages, they may get between the bone and this would cause the patient to fall or they can get between the bones and stay there; and, this would prevent motion either at the extension or flexion of the knee joint.

Q Is that a competent producing cause of pain, Doctor?

A Yes.

Q Will heat provide some relief of these symptoms?

A Yes.

Q Will rest?

A Yes.

Q Doctor, we have a number of exhibits that have been marked in evidence, records, medical logs, treatment reports from Wilmington and from Baltimore.

THE COURT: You have seen all of those reports, haven't you?

THE WITNESS: Yes.

THE COURT: You have looked at them?

THE WITNESS: Yes.

THE COURT: You have given a report to counsel, haven't you, of your findings?

THE WITNESS: Yes, sir.

MR. MOYLES: I have seen it.

MR. MATTHEWS: That's correct, Your Honor.

THE COURT: Ladies and gentlemen, these things are not secret. Whatever this man has in that regard is given to opposing counsel and vice versa.

Q (By Mr. Matthews) Now, Doctor, I will ask you if you will refer to Exhibit 11 -- Your Honor, to make things a little easier, I'm going to refer to a particular page of the exhibit which I have taken out.

THE COURT: Give it to him now.

(Handed to witness.)

What is that date?

THE WITNESS: This is dated 4-5-74.

Q (By Mr. Matthews) Doctor, is that an operative report?

A Yes, sir.

Q And, have you performed arthrotomies?

A I have.

Q What is an arthrotomy?

A An arthrotomy is an operation on an inner joint.

Q I would appreciate it if you would look at that. Of course, I don't want you to read it to the jury; I could just as well do that. But, I would like you to explain in meaningful language that would be meaningful to a layman just what was performed, the operation that was performed.

A The operation was done on the 4th of April -- March 5, 1974.

Q Pardon me, Doctor, so we keep our facts straight. I think you are reading the date wrong.

A April 5th. On general anesthetic the patient was put to sleep. And, the leg was prepared, cleaned and sterilized with preparation fluid; then a tourniquet was placed on the thigh to prevent bleeding; this is a rubber material which is inflated. This prevents bleeding during the operation.

After the blood is drained from the extremity, using an elastic band, with the knee bent, they cut into the outer side of the left knee; then, when they opened the

knee up, they found that the fat underneath the kneecap was large and apparently was inside the knee joint when the knee joint was fully extended. He said this was the area where the fat was inside the knee joint and was the area that he found was the tender area that he found before the operation. He took out this area of discolored fat and trimmed it back to prevent it from going into the knee joint and being bitten there very much like you would bite your teeth when you close your mouth each time you straighten your knee out. He took this fat out.

Then he explored the cartilage on the outer side of the knee, the meniscus; then, he found when he pulled on the cartilage, the cartilage itself was displaced between the two bones of the knee. In other words, it bit between the two bones like you imagine mashing a finger inside the door, every time you close the door, you mash your finger in there, the cartilage bites between the two bones of the knee, he found this happened every time he moved it in and out. So he said that it was torn; the larger cartilage was torn off from its back insertion. He had to take out this semilunar cartilage using a special meniscus knife.

The articular cartilage of the thigh bone and the shin bone was okay.

The ligaments that he could see of the knee also were okay. He couldn't see this inside of the knee. He then

cleaned out the knee joint and closed the incision with the stitches and put a dressing on, took the tourniquet off and sent the patient to the recovery room.

Q Doctor, what were the conditions or injuries which were confirmed, discovered at this surgery?

A Injury to the fat pad, a torn lateral semilunar cartilage or meniscus.

Q Doctor, I would like you to assume that from the time of your examination in September of 1971, that Mr. Evans worked intermittently as an able-bodied seaman, which is somewhat lighter work than that of a bosun, though still heavy work, for about two years, taking time off between jobs to rest his knee, continuing to apply heating pad to his left knee, that during this period and indeed up until the time of his surgery in 1974, that squatting and climbing became increasingly difficult for him, that his knee, which had started to give way and to lock as early as June of 1968, the left knee, continued to give way on him with increased frequency, that he noticed his left leg was becoming weaker, I ask you further to assume that he has received treatment in accordance with the hospital and medical records which you have reviewed, I ask you, Doctor, whether you have an opinion which you can express with reasonable medical certainty as to whether or not the conditions which you confirmed surgically by his doctors at

Public Health Service at Staten Island on April 5, 1974, were the same conditions from which Mr. Evans was suffering when you examined him in September of 1971?

A I do.

Q What is that opinion, Doctor?

A They were.

Q What are the reasons for your opinion?

A At the time that I examined him, he had signs of internal derangements before we saw him and a tenderness and a thickening. He continued with the signs of what we call internal derangement. It was not a good knee; it gave way on him. He was unable to work with the knee. He continued to have treatment intermittently and almost continuously ever since then. This is when he finally ----

MR. MOYLES: Your Honor, I'm going to have to move to strike some of that testimony as hearsay.

THE COURT: I think a doctor is entitled to do that as a basis of making a diagnosis.

You relied, not only on your physical examination, but also the statements made by Mr. Evans to you in determining your conclusions?

THE WITNESS: Yes, sir.

THE COURT: Did you take X-rays?

THE WITNESS: Yes.

THE COURT: Did the X-rays reveal any of the

conditions about which you testified?

THE WITNESS: No, sir.

THE COURT: But you did make a physical examination of his knee?

THE WITNESS: Yes.

THE COURT: Did that confirm anything about which you testified?

THE WITNESS: Yes. The physical examination confirmed the tenderness and confirmed the McMurray sign. I was able to pull the meniscus in and out with the hook. I was able to slip it in and out by maneuvering and felt it slip back and forth.

THE COURT: But most of the information on which you base your conclusions, including the date of the injury and the relationship between what you saw and the injury was based upon the statement of Mr. Evans?

THE WITNESS: Yes, sir.

THE COURT: Ladies and gentlemen, when a doctor examines someone, he not only relies on what he finds, sometimes it's X-rays, sometimes it is a physical examination; sometimes he makes a determination based solely on that physical examination; sometimes a doctor can't find anything and he makes a determination solely on the basis of what the patient tells him. Other times a doctor relies partially on what the

patient tells him and partially on what he has found. Now this man has testified that he relied in part upon the history given by the patient and his physical findings. Insofar as the doctor has relied on the statements made by Mr. Evans, you may consider the true worthiness of Mr. Evans' testimony because if he says one thing, a doctor can come to one conclusion; if he says something else, he can come to another conclusion. So, before you can give full credence to the opinion of the doctor, you have to first find that the statements made by the patient to the doctor were true.

Go ahead.

Q (By Mr. Matthews) Doctor, His Honor asked you about X-rays, is this cartilage type injury something that shows up in normal X-rays?

A No.

Q What is the most certain means of diagnosis, Doctor?

A The most certain means of diagnosis is to open up the knee and see it. But aside from that, there is another way, a special X-ray in which a special material is put into the knee joint; this very often can outline these ray elusive non-structures that are not visible to the X-ray; and they maybe sometimes outlined by the material you place in the knee. And, you can tell whether there is something wrong with these structures.

Q There is no evidence that there was any test of that kind performed in this case, is there?

A No.

Q But, the surest evidence is surgery; is that correct?

A Yes.

Q Doctor, before this surgery and before they decided whether to make the surgery, did the records at the Staten Island indicate whether this McMurray test was performed?

I will refer the doctor, if I can, to Exhibit 11.

(Handed to witness.)

A Yes.

Q Was their finding on the McMurray test the same as yours?

A Yes.

Q Now, aside from the McMurray's test that was performed just before surgery in 1974, is there any other indications in the records that you have seen, the records from '68, '69 and '70, is there any indication on any of those records that a McMurray test was performed?

A I didn't see any.

Q Now, Doctor, do you have an opinion that you can express with reasonable certainty as to whether the conditions which were confirmed by the surgery of April, 1974, are related to the accident of May 21st, 1968?

A I do.

Q What is that opinion?
A I think they are the same.
MR. MOYLES: I didn't hear your answer.
A They are the same.
Q Doctor, are there certain tests which are routinely performed before permitting a patient to undergo major surgery?
THE COURT: How would that prove or disprove any issue in this case? He had the surgery. You are contending the surgery confirmed the diagnosis of the doctor. What difference would it make?
MR. MATTHEWS: I'm sorry, Your Honor, I didn't hear the very beginning.
THE COURT: What difference would it make how he answers that question whether there were tests.
MR. MATTHEWS: Oh, Your Honor, I'm getting on to the heart condition.
THE COURT: This is something else. Are you an internist?
THE WITNESS: No, sir, I am an orthopedic surgeon.
Q (By Mr. Matthews) Is this major surgery, Doctor?
A Yes.
Q Was the man given general anesthesia?
A Yes.

Q Is it customary for a man to be given an electrocardiogram ----

A Yes.

Q -- before that surgery?

A Yes.

Q What is the reason for that, if you know?

A It's part of the routine operative procedure. Any surgeon has to be prepared and has to know his patient's general medical condition to know the status of the heart, lungs, circulation and all parts of the body before he operates.

Q Doctor, following the surgery, there is an indication in the record the patient was given codeine. What is codeine?

A Codeine is a narcotic medication used for treatment of pain.

Q Also there is a notation he was given Demerel intramuscularly. What is the purpose of that?

A That's an even stronger narcotic for the relief of pain.

Q Doctor, I'd like to ask that you have the records.

THE COURT: I have a record here.

Q (By Mr. Matthews) Could I refer to it for a moment? I would ask you to refer to page 53 of the doctor's progress notes. Could you tell the jury what those notes indicate whether there were post-operative complications?

A Yes.
Q What post-operative complications are indicated there?
A Urinary retention and myocardial infarction.
Q Is that myocardial infarction a type of heart attack?
A That is a heart attack.
Q Now, Doctor, you examined Mr. Evans again yesterday; is that correct?
A That's correct.
Q What were your findings at that time?
A That the knee straightened and flexed fully: there was still mild thickening of the front of the knee joint. There was the scar, of course, on the outer side of the knee joint which was well-healed; but there was some decreased sensation to touch of the skin on the region of the scar. The patient complained of inability to climb stairs and to go down stairs with the knee not being strong.
Q Is that sort of a symptom, something which sometimes occurs in this type of condition?
A Yes.
Q Do you have an opinion as to whether Mr. Evans has achieved the maximum benefit of medical care at this time?
A I do.
Q What is that opinion?
A Not yet.
Q You think he will get better?

A Yes.

Q About how much longer would you say, your best opinion, Doctor, as to the maximum benefits?

A About six months of therapy.

Q Do you have an opinion that you could express with reasonable medical certainty as to whether at the conclusion of that time he will be able to return to work of an able-bodied seaman and bosun, keeping in mind that work involves going up and down ladders aboard ship and doing a good deal of squatting and bending?

A It is possible.

THE COURT: Possible to do what?

THE WITNESS: Possibly he could return to work.

Q (By Mr. Matthews) We are dealing in probabilities here now, Doctor. So I am going to ask you which is more probable, that he will or will not be able to? Which is more likely?

A More likely he will not.

MR. MATTHEWS: Thank you.

THE COURT: After how long a period?

THE WITNESS: At six months.

THE COURT: All right. Go ahead.

CROSS-EXAMINATION

BY MR. MOYLES:

Q Doctor, of course you have admitted and the Judge has explained to the jury, you are accepting at face value when you examined Mr. Evans in September, 1971, that the history he gave you was correct?

A Yes.

Q Then, you did your orthopedic work-up, an orthopedic examination to determine in your opinion what was wrong with his left knee and right knee?

A That's right.

Q Now, you have talked about a positive McMurray. Could you explain that McMurray to me please and to the jury?

A A McMurray sign is carried out with the patient lying down; the knee is held back flexed bent up all the way; then it is straightened out with a twisting with the leg twisted inward and then it's straightened out with the leg twisted outward; and attempts are made to elicit a click somewhere in the inner mechanism of the knee joint; if you do elicit such a click, then this is a positive McMurray.

Q Now, is it fair to say that the McMurray test is two-fold, external rotation and internal rotation?

A There are subdivisions of this, yes.

Q So, if you were examining for a medial meniscus injury,

you would rotate the leg externally, isn't that correct?
A No, that's not correct. It becomes very, very complicated because the interior part of the medial meniscus causes a click in a certain fashion externally; and the posterior part of the lateral meniscus can also cause a click in a certain phase of the extension or external rotation. It's very, very difficult to differentiate from lateral; sometimes you can feel with your fingers, if you have your fingers on either side of the joint; sometimes you can feel a click deep in the knee joint. You are not sure where it is.
Q Well, are you saying to us now then, Doctor, you came out with a definite diagnosis of medial meniscus on September 9, 1971, and at that time that diagnosis was incorrect?
A That's right.
Q You are now saying, based upon the hospital records of the U.S. Public Hospital, Staten Island, your review of them indicated that the injuries operated on on the 5th of April of this year was a lateral meniscus?
A The injury operated on was internal derangement of a knee.
Q It was a lateral meniscus?
A They found the fat padding into the knee joint had become damaged and that the lateral meniscus was torn; they did not explain.

Q But, they excised the lateral meniscus, didn't they?
A They removed the lateral.
Q They removed the lateral meniscus?
A Yes.
Q You examined Mr. Evans yesterday?
A That's right.
Q Bearing in mind you had before yesterday when you examined Mr. Evans again, that you had your previous report of September 9th, I think it was, 1971, in front of you; and, you had access prior to that time to the complete medical records of the U.S. Public Health Office. What did you find as to a medial meniscus?
A I didn't think he had one.
Q You didn't think he had one?
A I didn't think it was torn.
Q So that would sort of confirm your orthopedic work-up of consultation done in March and April of this year of a positive finding of a lateral meniscus was correct, by the U.S. Public Health doctors?
A They found one; they saw it and took it out.
Q They didn't find any medial one, did they?
A They didn't look.
Q Did you review the orthopedic work-up, orthopedic consultation report in those documents?
A I did.

Q It was their opinion, prior to the surgery, that it was a lateral meniscus problem, wasn't it?
A That's right.
Q There is nothing in their talk about medial?
A Talk about medial, no.
Q Doctor, of course, in your science you have to make your calculated opinions. I am not being derogatory, based upon hard facts and suppositions and past medical history ----

MR. MATTHEWS: Your Honor, I don't think that question is capable of being answered.

THE COURT: I don't know what the question is.

MR. MOYLES: All right.

Q (By Mr. Moyles) You diagnosed in 1971 a medial meniscus, an internal derangement of the knee?
A I diagnosed in 1971 that there was damage to the front of the knee joint and the side, the region of the interior and damage to the medial meniscus. I felt there was something wrong with the inside of the knee joint. That was my diagnosis.
Q Now, Doctor, did you prescribe any treatment for Mr. Evans at that time?
A No.
Q Were you requested by him to prescribe any treatment?
A I have no recollection.
Q Do your records reveal anything?

A No, sir.
Q He was merely sent down to you for an examination?
A That's right.
Q You're not his day to day doctor?
A No.
Q You never were his orthopedic consultant specialist?
A No.
Q So, you saw him twice, September 1971, and yesterday?
A That's right.
Q How long did it take you to do your examination on September 9, 1971?
A Ten minutes.
Q Ten minutes based upon information he gave you and your expertise as a qualified orthopedic surgeon, you made a definitive diagnosis which is incorporated in your report?
A That's right.
Q Doctor, have you ever seen a case where you have diagnosed a meniscus problem and it turned out to be arthritis?
A Sure.
Q Isn't it true, Doctor, that sometimes diagnosis and a McMurray test would even give you a false diagnosis as to a meniscus? It can actually be an arthritic condition?
A Anything is possible.
Q Would infectious diseases, and particularly venereal

disease, would a history of that have a tendency to have arthritis of the knee?

A Possibly, but not likely.

Q What about arthritis of the ankle?

A Also possible, but not likely.

Q Have you ever ----

A Things like that happen.

Q Isn't there a thing in the orthopedic field called gonorrhea arthritis?

A There is a one-shot swelling that goes away after the attack.

Q The attack would come back, wouldn't it?

A No.

Q It would never come back, just once you get the attack?

A You can get the attack -- well, if you are asking me to describe what an attack of gonorrhea arthritis is, I will. If you want me to answer your question, I will do that too.

Q Doctor, I'm not trying to fight with you.

A No, no; I'm trying to make it clear.

Q I am trying to put facts before this jury to make sure they understand.

A This gonorrhea arthritis is a type of severe inflammation of a joint which comes in relation to an attack of gonorrhea which disappears when the gonorrhea is treated and which usually leaves no residual. It is not the same

as what the layman and the doctors even call arthritis. This is chronic condition in a joint in which there is aching in the joint and which spurs develop in the joint, et cetera, et cetera. Gonorrhea arthritis is different.

Q I have a book around here some place.

THE COURT: Aren't you going to have an expert?

MR. MOYLES: Yes I am, Your Honor.

THE COURT: Why don't you ask him that question.

MR. MOYLES: All right, Your Honor. I am asking him something on his medical history.

THE COURT: I didn't understand one thing you mentioned. You said after the operation he was given codine and he was given Demerel. That was for pain, wasn't it?

THE WITNESS: That's right.

THE COURT: You are not saying there was any correlation between giving a man Demerel and a coronary occlusion that resulted thereafter?

THE WITNESS: He had pain from the coronary occlusion. After the whole post-operative procedure, this was characterized by pain medication. He also received pain medication after the heart attack.

THE COURT: But you are not saying he got the heart attack because they gave him Demerel?

THE WITNESS: No, no, sir.

THE COURT: I thought that was one of the things you said.

THE WITNESS: No, I'm sorry.

Q (By Mr. Moyles) I was going over this point. Since you have taken it up, I will address myself to it now.

The operation, Doctor, took place on April 5, 1974. The heart attack took place on April 14th, which is a nine-day span, right?

A Yes.

Q Did you review the doctor's order for that period of time from April 5th through April 14th?

A Yes.

Q Did you find them to be in order? That is, would you have prescribed the same medication and the same handling of the same problem?

A Yes.

Q Do you have those records in front of you?

A I do.

Q I note in reviewing the copy I have, Doctor, I think it was on April 9th and 10th at this point Mr. Evans is in the recovery station, is he not, from these records?

A Yes.

Q Would you accept this as a true statement on April the 14th, Mr. Evans was taken down to the physical therapy ward or therapy area of the Public Health Hospital in a

wheelchair?

A Yes.

Q He was going down there, I think, to be measured for crutches?

A Yes.

Q He must have been in a pretty good shape to go down there in a wheelchair for physical therapy?

A I don't know about the pretty good shape. He had an operation several days before.

Q He had adequately recovered.

A Well ---- (pause.)

Q Is that the normal period, five days, say after an operation of this type, you get the patient up and take him down to physical therapy?

A It is usual sometimes.

Q If he was having a heart operation, would you get him up that quickly?

A No.

Q Do the records that you review give any indication that the U.S. Public Health had any suspicion at all he had a heart problem?

A Not until it happened.

Q Would you have treated differently if you knew he had a long period condition of hypertension, high blood pressure?

A His blood pressure was taken routinely; and, his blood

pressure was taken by the anesthetist numerous times.

Q Let me ask you this, Doctor, I think you know ----

THE COURT: I think we are assuming something that is not in evidence. Doctor, you didn't testify that you thought the heart trouble was probably caused from the operation, did you?

MR. MOYLES: Yes he did, Your Honor.

THE COURT: I didn't understand that.

THE WITNESS: Post-operative complications.

THE COURT: You say it is probably caused by that?

THE WITNESS: I think it is most likely, yes, but that is not my field of expertise. I think somebody else would have to say this. But, when we elicit complications as surgeons, if a heart attack -- if a patient gets a heart attack nine days later, we assume it to be a post-operative complication, not something that just came on.

THE COURT: Go ahead.

Q (By Mr. Moyles) Doctor, let me ask you this so as to keep this thing in proper perspective: This man had an orthopedic operation. Now, does that put the orthopedic in charge of this case?

A Yes.

Q He would have overall control over the anesthetist or

internist or cardiac man or, you know?

A Well, that doesn't really work that way. You can't -- in this day, an average specialist has control of his own field of expertise.

Q Let me ask you this: When it comes to ordering drugs for a patient after he has had an operation, who has the authority primarily, I am not talking about an emergency of a patient coming in, I'm talking about in a normal condition without an emergency, who is the doctor primarily in charge of ordering the drugs that are to be given to that patient during his rehabilitation?

A His surgeon.

Q Excuse me?

A The surgeon.

Q In this case, it would have been the orthopedic?

A That's right.

Q He would also consult, would he not, with the anesthetist prior to the operation as to what drugs are to be used during the operation?

A The anesthetist takes care of that.

Q He has sole and absolute control of that?

A Yes.

Q Okay. Did you look at the drugs that were used during this operation?

A Yes.

Q I know you're not an anesthetist, but all doctors are basically qualified ----

THE COURT: Aren't we getting far afield, Mr. Moyles? What difference would it make? Are you trying to show that the drugs that were given to him by the doctor caused the heart attack?

MR. MOYLES: That's right; that's what I'm driving at, Your Honor.

THE COURT: You are asking the wrong man. You should ask the anesthetist.

Q (By Mr. Moyles) Would you look at the medical for April 10, 1974, the doctor's orders which would be about page 63.

A Thank you.

Q Could you tell me what the entry there "D.C." means?

A Stop this special medication. That was given to him for the urinary relief.

Q It's Urecholine? (phonetic)

A Yes.

Q Is it a powerful drug?

A It's a drug, yes.

Q You testified previously about codeine and Demerel. Is this more powerful than Demerel and codeine?

A It's like comparing green paint to blue paint. It is to stimulate the bladder and to make the patient urinate.

It is not a pain medication.

Q Would you normally use this for a man with a heart condition?

A You might.

Q Normally?

A You might, I don't know.

Q Do your medical reports show what the doctor's orders were for April 12th and 13th?

A These medical reports?

Q Yes, the doctor's orders.

A 10th and 11th, I have no reports for the 13th.

Q Is that unusual that there would be no order for the 12th or 13th?

A If the patient is doing well, the previous orders still hold.

Q So, you don't make any entries then?

A No.

Q If he is doing well, you leave it as it is?

A This means the medication or treatment that he was on on the previous day are being continued.

Q Doctor, I notice this isn't your general field.

THE COURT: You are going far beyond the direct examination of this witness. The witness has told you he is not a specialist in this field. He is not a specialist in internal medicine or bladder disease.

You are going to call your own witness, why don't you ask those questions of him.

MR. MOYLES: Your Honor, this causal relationship was introduced to this witness by Mr. Matthews, not I. He gave opinion that the heart attack was related to the surgery.

THE COURT: I hope we are going to have a few minutes for lunch.

Q (By Mr. Moyles) Doctor, what is spina bifida?

A That is bone defect in the lower part -- in one of the spines.

Q This comes within the area of orthopedics?

A That's right.

Q Did you notice, in reviewing the documents, a medical report that he has that disease?

A I didn't.

Q Isn't it true that disease will give you weakness of the knee ----

A No.

Q -- affect your knee joints?

A No.

Q Are you familiar with the American Medical Association on current medical terminology?

A Yes and no.

Q You don't use it in your practice?

A No.

Q Will sinus bradycardia give you weakness of the joints?

A No.

Q It can?

A No.

Q It cannot?

A No.

MR. MOYLES: I have no more questions of this witness, Your Honor.

MR. MATTHEWS: No redirect, Your Honor.

THE COURT: That's all. Call Mr. Evans back.

JULIO EVANS

resumed the witness stand for further cross-examination by Mr. Moyles:

Q Mr. Evans, do you smoke?

A I smoke.

Q Have you smoked over the last number of years?

A I started smoking about the age of thirty-eight.

Q That's when you started. Now, you are fifty-seven?

A Yes.

Q During your questioning by your attorney, you said you went back to Puerto Rico in August, 1968, because of the

injuries to your knee after you signed off the vessel; is that your testimony?

A Yes, sir.

Q You didn't go on vacation, you went back to Puerto Rico because of the injuries to your knee?

A Well, so that's my home; I go there for that reason.

Q You went to Puerto Rico in August '68 because of the injuries to your knee?

A I went to Puerto Rico, that's my home. First from thereon, I take care of my knee.

Q You did not go on vacation?

MR. MATTHEWS: Your Honor, I would like that term defined, I would like the term "vacation" defined.

Q (By Mr. Moyles) Mr. Evans, do you recall I took your deposition back in September, 1971, before trial?

A I remember.

Q You reviewed that deposition before coming here today?

A I got it some place.

Q Do you recall ----

THE COURT: Give it to him. He is entitled to look at it. Do you have a copy?

MR. MATTHEWS: I think it is back here, Your Honor.

THE COURT: You can read the questions and then ask him about the answer.

Q (By Mr. Moyles)

"Q. I'm trying to ascertain from you, Mr. Evans, the two and a half months that you were on the beach after you left the CALMAR..."

THE COURT: Give him the deposition.

MR. MOYLES: I haven't finished reading the question.

"...was that a vacation period for you or was it a period between vessels being available?"

THE COURT: You can read the whole page to see if the answer is correct.

(Handed to witness.)

A This is a complicated situation.

THE COURT: Go ahead.

THE WITNESS: May I explain?

THE COURT: You read the answer. He is going to ask you a question.

(Deposition handed to witness.)

You can ask him if he gave that answer.

Q (By Mr. Moyles) Mr. Evans, did you give the answer which appears on page 38, to the question I just read to you?

THE COURT: You can read the answer.

Q (By Mr. Moyles)

"A. I include my vacation and my waiting period between vessels."

Is that the answer you gave to that question?

THE COURT: First you say whether you did give that answer and then you can explain.

A I suppose I would give that answer. We talked about vacations, seamen taking a vacation, paid vacation.

THE COURT: Was that part of your wages?

THE WITNESS: Vacation, you go there to relax; I never been able to take a vacation in my life.

Q (By Mr. Moyles) My point is ----

A We call vacation, the money they give us as extra pay, which is vacation money. I had no other place to go but to my home, go down to Puerto Rico.

THE COURT: Do you want to impeach him in any other portion of the deposition?

MR. MOYLES: No, Your Honor, I don't think so. I could look at my notes; I don't think so.

THE COURT: If so, give him the other deposition, Mr. Matthews.

MR. MOYLES: Just a few more questions to clear up something.

THE COURT: Go ahead.

Q (By Mr. Moyles) The accident of May 21, 1968, you do admit that the chief mate had advised you prior to your

going on the number 2 hatch that it was open?

A Not prior; it was about a half hour before I started before I started working, he did.

Q I'm not trying to confuse you. You said it was a half hour. I used the word "prior". A half hour before, we will accept that. You were told by the chief mate the hatch was open?

A I was aware of it.

Q And, this job you were going to perform on the number 2 hatch was not out of the ordinary for you, was it?

A Routine work of securing.

Q You have done it many times, correct?

A Yes.

Q I think you testified you jumped five feet; is that correct; that the hatch opening was about five feet?

A Yes, about.

Q And, that it is four to four and a half feet from the hatch covering to the main deck?

A That's about right.

Q Now, you testified that you have done this job routinely in the past; you would jump up on the number 2 hatch and jump down, wouldn't you?

A Not the way you explain.

Q Excluding this particular incident of May 21st, 1968, when you were doing this type of work on the other occasions,

routine work, would you get up on the number 2 hatch?

A Would have to get up.

Q You would get back down off the number 2 hatch?

A Afterwards to get down.

Q How would you get down?

A By steps.

Q Would you ever jump off it?

A Can't jump, can't jump. I can't jump that high, the steel deck, you're going to hurt yourself.

Q I am now interested on June 14, 1974, I think you testified that the vessel was experiencing heavy weather?

A June 14th?

Q Yes.

A Having heavy weather.

Q You were performing a routine duty pursuant to instructions of the chief mate?

A I was instructed to work on the securing.

Q You testified you lost consciousness. Would you tell me how you lost consciousness?

A After I struck my right knee, I fell; then, I don't know how long I was laying there.

Q Did you strike your head on anything?

A What?

Q Did you strike your head?

A I don't know what else I struck; I know I struck my

right knee.

Q You know you struck your right knee and you lost consciousness?

A The pain was so severe, it was impossible to move the whole time.

Q Now, do you recall on your direct examination you said that by the time the chief mate yelled at you while you were on the number 2 hatch on May 21st, 1968, you had noticed you were close to the opening but had already lost your balance?

A I don't say the chief mate yelled at me; that's impossible. The engine is running -- the engines are running; there is no voice.

Q Did you lose your balance before you got to the opening?

A I was very near the opening. I find myself, I'm in the position where I cannot retreat. I cannot go to a safe side; so the balance was lost there.

Q You testified that you noticed you were close to the opening?

A Of course.

Q I would like you to explain that, were you a foot from the opening; were you two feet from the opening?

A I was at the very edge of the opening.

Q That wasn't your testimony. Your testimony was you noticed that you were close to the opening and you lost

your balance.

THE COURT: He didn't say the chief mate never told him. He said he was close to the opening and it was too late to retrieve himself and he jumped. That was his testimory. If you want to read it back, the reporter can.

MR. MOYLES: I have no more questions, Your Honor.

THE COURT: Go ahead.

MR. MATTHEWS: No redirect, Your Honor.

THE COURT: You may step down. Call your next witness. Is that your case?

MR. MATTHEWS: No, Your Honor. I have another witness in the courtroom.

THE COURT: We will take a recess now until 2:00 o'clock. Ladies and gentlemen, please keep an open mind on this case. Don't determine how it should be decided until you have heard all of the testimony and the arguments of counsel and the instructions of the Court.

Everybody remain seated while the jury leaves. Come back properly at 2:00 o'clock. The Court will be in recess until 2:00 o'clock.

(Jury leaves courtroom and proceedings occurred out of

the presence of the jury.)

MR. MATTHEWS: The plaintiff's son is here. Then I indicated to Your Honor and Your Honor very kindly agreed that if the proof is still continuing at 3:30 I have the internist.

THE COURT: All right.

MR. MOYLES: Your Honor, this is the first knowledge I have that Mr. Matthews was calling Mr. Evans' son.

MR. MATTHEWS: I don't believe we discussed it.

MR. MOYLES: It's not in the pre-trial order.

THE COURT: I don't recall it.

MR. MATTHEWS: If I may say so, Your Honor, in Your Honor's chambers you asked me about witnesses; I said if there is any dispute about the man's physical condition before the accident, then I would be calling somebody from his family to confirm it.

THE COURT: I think that's right.

MR. MOYLES: Your Honor, if I may, he said if I went into the question of customs he would call a witness.

MR. MATTHEWS: That's something else. That's another witness.

THE COURT: How long is the son going to testify?

MR. MATTHEWS: Five minutes.

THE COURT: I will let him testify. In the first place, I don't think it does you any good. I don't think it does the defendant any harm. Is that your case?

MR. MATTHEWS: Your Honor, we have these exhibits, I would like to know how to handle them.

THE COURT: All exhibits are admitted. You can argue your case to the jury. When you are arguing, you can refer to the exhibits.

MR. MATTHEWS: That's fine, Your Honor. But if we don't read them during our case and Your Honor says, "Mr. Matthews, you have got thirty minutes" or something like that, I have got to read all my exhibits and digest my argument in that time.

THE COURT: Do you want to read those exhibits to the jury?

MR. MATTHEWS: Excuse me?

THE COURT: You want to read those exhibits to the jury?

MR. MATTHEWS: Some parts of them, I do, whether I do on my summation or not, yes.

THE COURT: How much time do you want on your summation? It is a short case and the issues are simple. You have built it up on both sides. But it is

not that big of a case. The issues aren't that complicated. It seems to me if you had a half hour, that would be plenty of time. I will give you forty-five minutes.

MR. MATTHEWS: Fine.

THE COURT: I will give defense counsel forty-five minutes also. Who are you calling?

MR. MOYLES: I am just calling Dr. Rizzo, Your Honor.

THE COURT: Is he an internist?

MR. MOYLES: He is an orthopedic, Your Honor.

THE COURT: There is a real problem on whether we can submit the question of the heart trouble to the jury. It is pretty thin.

MR. MATTHEWS: That's why the internist is coming, Your Honor.

THE COURT: All right.

MR. MATTHEWS: Your Honor, one other thing. You were kind enough to go over the requested charges with us in your chambers. That's something that has been raised here just this morning.

THE COURT: What is it?

MR. MATTHEWS: The question about relationship between some drugs and the heart attack. I would ask Your Honor to instruct the jury that if they agree

with defendant's contention that if the drugs were required by the surgery and if the surgery was required by the injury, then, of course, there is proximate cause.

THE COURT: There is no question about that, is there?

MR. MOYLES: Your Honor, if I may be heard on this, I went into this medicine that was used in connection with the bladder condition to stimulate the prostatitis. I don't think probable cause extended that far back, that bladder condition and the relationship to a knee condition. I don't think that can be related to a heart condition.

MR. MATTHEWS: He had urinary retention; that was a complication of the surgery. He had a heart attack twelve days later.

THE COURT: Didn't he have a bladder problem before that?

MR. MATTHEWS: He had prostatitis. They had made the test.

THE COURT: I handled this same problem in a case in which the jury brought back over three hundred thousand dollars because the doctor made a mistake. He tied off the internal carotid artery. I instructed the jury where a man goes in for surgery,

even though they do something wrong, the defendant is liable for all the consequences of the act. If you can show that the drug was given without regard to the surgery and separate and apart from the surgery, then that's different.

MR. MOYLES: Your Honor, this is the point. The medical records on April 10th, they have him up in the wheelchair and down to the physical therapy unit. Then they started given him this stimulus because of his bladder condition.

THE COURT: Mr. Matthews, do you have any evidence that the bladder condition was part of the post-operative problems?

MR MATTHEWS: Oh, yes, Your Honor. The internist will cover that. That's right on the check list as far as post-operative complications is concerned.

THE COURT: All right. We will start in at 2:00 o'clock.

(Noon recess.)

DIRECT EXAMINATION

BY MR. MOYLES:

Q Just a few clarifying questions, Your Honor. This is Dr. Rizzo the III. The reports which you have just handed him, which is deemed an exhibit in evidence, was made by his father.

I am going to ask Dr. Rizzo, for the sake of the record, have you ever personally examined Mr. Evans?

A No, I haven't.

Q Would that report that you're looking at, is the report kept in the ordinary course of business of your office, office's report?

A Yes, it is, it appears to be his signature.

Q Doctor, I would ask you to address yourself to the third paragraph of that report, the examination, could you explain to the jury what the findings were, in terms they will understand as it reflected in that paragraph?

A Yes. I will start with the initial sentence, "Patient is a well-nourished male, 54, 5'1, 120 pounds," just describing him in general.

Q Bearing in mind, ladies and gentlemen of the jury, this report was September 9th, 1971.

A "He walked with a good gait." In other words, he was

walking without a limp or any problem. "He squatted with some tenderness of limitation on the left." In other words, when he was asked to get all of the way down, I would take it, he was unable to get as far down on the left as he did on the right probably with this position. (Indicating.)

"Hip movement," that's examination, if I may go into this.

THE COURT: Go right ahead.

A "Patient is on the table, hip moved in every direction." If there is any kind of swelling pathology or trauma in the hip, you will find restrictive motion. Hip motion gives you pain, that's why it is done.

"The left knee presented no synovitis." Synovitis would be swelling within the knee. In other words, a swollen knee. The synovia is a lining of the knee joint. Every joint is lined. And, inflammation or acute bleeding, et cetera, you will find a swollen knee. There was none present.

Bursitis refers to the tissue or gristle. It's a sac which will be between the skin and the patella or in between the muscle layer where the muscles attach beyond the knee joint. You will get specific areas of tenderness in the areas where the bursitis is, perhaps in the shoulder. There was nothing at that examination to indicate swollen or bruises or swelling between the skin and the kneecap.

He says there is some pain in the super patella area at the extremes of motion. Well, the patella is the kneecap. Super patella area means the area above the kneecap. So, that would be right up here (indicating). So, when he bent the knee all the way, he evidently had pain referred to this area up here (indicating).

There is no instability of the knee joint. Well, there are four major ligaments in the knee joint. If you stop and think, they all have a purpose. One is on the outside. (indicating). Then the inside. One on the outside and then two are in the middle of the joint. The purpose of those ligaments are to keep the knee from opening this way or this way or pushing it back and forth. (Indicating) When you stop and think of a hinge, joining something, it has to hold it in position; and, it is these four major ligaments. There is no indication of a tear. Otherwise, you would get a gapping of the joint. In other words, if this were stretched, the knee would probably open up or if one of the two called cruciate or on the inside of the joint were ripped, you would be able to push it back or forward, giving it an instability. There was no instability of the knee joint.

The patella motion is free. Now, sometimes with a large swelling probably of the knee cap, say in a fracture, you wouldn't be able to move that kneecap too easily or if

it were out of place, you wouldn't be able to move it.

Now, as I'm doing that to my kneecap now, I don't know how well you can see my patella, the motion is free. (Indicating) Often if there is a pain in the knee, a patient holds it very rigid and you couldn't move it.

There is excellent quadricep tone. Now, the quadricep muscle is the muscle that is on the front of the thigh. It's your big thigh muscle. I am tightening it now. Now, when you have a problem in the knee of serious consequences, you often get atrophy of the quadricep muscle. In other words, this swings and this is often why these give way. We test to see if there is a chronic problem because any chronic problem, there will be weakness because you favor the knee and deflect it when something is going on in the knee. It inhibits you from contracting this too much. So the quadricep tone is excellent.

Some crepitation is present in the knee with contraction of the quadricep against resistance. This is a test to the undersurface of the kneecap. There is a condition called chondromalacia. A lot of athletes get it. People who have damaged their kneecap will get it. And, it scars the underneath surface of the patella so if you rub that patella, which should be smooth against the smooth surface of your thigh bone or femur, here, if there is a change, you are going to get crepitates, which is a creeping. And,

it's going to be rough.

Evidently there was evidence of some arthritis or cartilage damage not clarified. Let's say the lining of the patella, that must have had some ridging on it or something to cause the crepitates; that's all I can tell you.

Groaning test is negative. Now, groaning test has a lot of different names. One of them that is used to test the meniscus or semilunar cartilages. Semilunar cartilages are different from the cartilage of the joint it has to pad one on the inside of the knee and one on the outside of the knee; and, by turning the knee in different directions and putting pressure, imagine the knee pad in here, if you turn and stretch it one on the inside, if there is a flicker or tear in it, that will often click or get caught. So, when you grind down the knee, often the patient is lying on his stomach and pressure goes down on those two cartilages to see if there is any tear in the inside or on the outside. The inside giving you pain here; the outside meniscus over here. So, he states that is negative.

There is some probable lining along the tibial plateau. Well, the tibia is the lower bone which comprises the interior or lower part of the knee.

Now, lipping would be osteoarthritis spurring. Everything -- even fingers with arthritis, they get swollen. And, in the fingers, it is easy to see if you have arthritis

of the finger; but feeling along here, according to this evidence, there was some thickening or he says, lipping, which means a little spurring.

Both knees tested about the same. There was no synovitis or bursitis. There is good muscle tone.

The groaning test, again he states it is negative.

Full extension and flexion with some crepitates of the quadricep muscle. This is repeated. He could flex it all the way; he could extend it all the way. But as he flexed it, he could hear something underneath the kneecap. There is probably lipping along the tibia. He is just reiterating his findings, which is the roughness on the outside of the tibia bone.

The legs were equal. That's self-explanatory.

The circumferences of the thighs and calves are equal to the same level. There is another way to see if there is quadricep atrophy and if there is prolonged problems in the knee, often you get atrophy. Then, they would be measurable because the involvement would have less muscle tone than the uninvolved knee. That's another way of making sure that you know there has been degeneration in muscles.

Circumferences of the knees are equal at the same level. That's measuring, if your knee is swollen, it is going to measure a little more on the opposite side. That's the end of the physical.

Q Doctor, I ask you to direct your attention to page 2 of the report and will you tell us what your father's conclusion was after this examination of Mr. Evans?

A He states at this time the patient presents subjective complaints. Subjective means the patient's symptoms. Objective would refer to the findings found through examination. He said the symptoms suggested that there may be some arthritic involvement in both knees. I cannot make out any definite injury to a meniscus. Well, in his groaning test is where he could find nothing, evidently, to the meniscus. There is excellent tone of the quadricep and full range of motion in the knee. The excellent tone in the quadricep would make him think that there is nothing serious causing a disability or you get muscle atrophy. It is my opinion that the patient is fit for duty and needs no further special care or treatment.

Q Doctor, could you define for us the word osteophyte?

A Osteophyte would refer to arthritic lipping; that is a bony overgrowth. It is described as a calcium deposit on a joint. They usually occur on affected joints of osteoarthritis.

Q I show you Exhibit 8 in evidence and direct your attention to a comment there of September 30th, 1970, and ask you would you read that and explain what that entry means to the jury?

A Knee X-ray shows osteophyte formation anterior superior. Latex formation normal, aspect of patella - both. X-rays of knee shows osteo formation anterior, superior aspect of the both patella. Well, that refers to osteoarthritis changes on the kneecap which would be to explain a grating in the knee as I tried to explain. Latex fixation is a test done usually for rheumatoid arthritis as rheumatoid arthritis can affect the knee. This is read as negative.

Q Doctor, had you ever seen that report you are testifying from prior to my handing it to you today?

A No.

Q Doctor, the word McMurray has come up in this trial. I will ask you to explain it to us what is a McMurray test?

A A McMurray test is a test to determine whether a cartilage is torn. It is named after Dr. McMurray. It is composed of two tests. It isn't just one because there are two cartilages. The McMurray test is used to determine whether there is a tear in the medial or lateral meniscus.

Now, the test for the medial meniscus, the leg is flexed, sort of loose and then the leg is rotated out. Remember the semi-lunar cartilage, I told you about. As you push out -- do it on yourself when you get home-- you feel a stress on the inside of your kneecap in doing this, and, if there is a soft pad in the knee and it is torn, it will click or you will get pain. If you can just do that, that's

for the inside of the knee to the outside. (Indicating.)

Q So we keep things in order, that is the test then you would use to determine whether you had a medial meniscus tear?

A Yes.

Q That's the external rotation?

A That's the external rotation. Then to get the test whether you have a tear on the outside, you do a lateral. You twist the other way, stretching it out and then you put the pressure on the outside cartilage.

Q Now, Doctor, if you perform an external McMurray, that would give you then a diagnosis with respect to a medial meniscus; is that correct?

A Define your term. If you do a test, external rotating test specific for the medial meniscus, if it was positive, it would show a medial meniscus; and, an external one, I also think of a lateral meniscus, if you had a tear of the medial, it wouldn't show up on a test for the lateral.

Q What I'm trying to make clear, Doctor, you testified to an internal and external rotation. External is a test you use to determine whether you have a medial meniscus?

A External rotation of the tibia, yes.

Q The internal rotation is to determine whether you have a lateral meniscus?

A Right.

Q Now, I think you testified that your father's report did not indicate any meniscus problem; is that correct?

MR. MATTHEWS: Your Honor, I would just like to object to the leading form of that last question. I think as far as what his father's report says, it speaks for itself.

THE COURT: That's right. Does your father refer to the meniscus at all?

THE WITNESS: Yes, with the grinding test. Then he states that he did not -- he cannot make out any definite injury to a meniscus.

THE COURT: All right.

Q (By Mr. Moyles) Now, Doctor, are you familiar with the term called gonorrhea arthritis?

A Yes.

Q Would you explain to us what that term is?

A Gonorrhea is a venereal infection which affects the joints. The knee joint is the most commonly involved joint. Unless a history has been elicited, it is very often hard to diagnose because you get swollen knees often without a lot of pain; and, it can emanate a lot of different symptoms. Special tests have to be done with aspiration of a fluid to get the bug from the knee joint. If left untreated, it can cause destruction of the knee joint and arteries.

Q Can gonorrhea arthritis sometimes be mistaken for a

meniscus?

A Yes.

MR. MATTHEWS: Your Honor, I would like to know whether the doctor is going to indicate such a diagnosis in this case, because otherwise this testimony is very irrelevant.

THE COURT: I don't understand the significance of this. I thought they operated on him and found and removed a lateral meniscus.

MR. MOYLES: Your Honor, we don't dispute he was operated on on April 5th of this year for a lateral meniscus. We have the findings o Dr. Rizzo and his report is in evidence which found no meniscus problem in September 9th, 1971. We have Dr. Mauer's testimony this morning that he found a medial meniscus in September 9th, 1971.

THE COURT: That is the relevancy. But I don't see why this reference to gonorrhea has any relevancy to anything you are attempting to prove.

MR. MOYLES: Your Honor, the medical report which Mr. Matthews has put in has shown this man had an arthritic condition. One set of doctors diagnosed it as arthritis and another diagnosed it as a meniscus. The operation was six years after the alleged injury occurred.

THE COURT: You can bring all that out. Doctor, if a surgeon examines a man and would come to the conclusion that the patient probably had a lateral meniscus problem and some years later there was an operation done and they found out it was a medial meniscus, what would be the significance of that situation?

THE WITNESS: That he injured his medial meniscus after the examination. If the diagnosis later was made on one thing and later after the operation they found a torn medial, you don't get a medial and lateral confused because the symptoms are on different sides of the knee if that is what you're asking me and six years previous a diagnosis of the medial was made and then he had an operation which showed a lateral and no medial, the thing was, at the time he had no medial, and after the examination, he must have had a lateral.

THE COURT: I think you have answered it.

MR. MOYLES: Your Honor, I have no further questions of Dr. Rizzo.

CROSS-EXAMINATION

BY MR. MATTHEWS:

Q Doctor Rizzo, you are a well-qualified orthopedic surgeon. Are you also a personal friend of Mr. Moyles?

A I know Mr. Moyles, yes.

MR. MOYLES: Your Honor, I will stipulate to that. But I also would like now to make a statement in front of the jury. But, it is a known fact that Dr. Mauer's is Mr. Matthews' witness. I think it is highly improper.

THE COURT: Ladies and gentlemen, ordinarily a lawyer doesn't call a doctor to testify as an expert unless he is friendly to him. I think it goes both ways. But you are to judge the doctor's testimony by what he says. These doctors are well-qualified. You are to judge their credibility and decide whether you like the testimony and whether you think it is sound. Forget about whether he is a friend. They are all friends. Doctors and lawyers are friends of each other. Go ahead.

Q (By Mr. Matthews) Doctor, what is the meaning of a guarded prognosis? What does that mean?

A Guarded means you cannot say there will be final and there will probably be some problems arrived at.

Q Doctor, your dad examined this man three years ago;

is that correct?

A 1971, yes.

Q At that time, is it your testimony that there were only subjective complaints?

A No. There were objective findings of spurring.

Q It is a little confusing where it says subjective complaints, isn't it?

A Right.

Q You didn't mean to imply to this jury there were only subjective complaints?

A No, no. The examination bears out the arthritic findings. And, I think also it states that he complained of discomfort when squatting down on the latter.

Q Now, it was your father's statement he could not make out a definite injury to the meniscus; is that right?

A I think he said he did not find any evidence, any definite injury to a meniscus.

Q What is the best evidence of all as to whether a meniscus has been damaged?

A Well, symptons specific to a meniscus ----

Q Wouldn't looking at it?

A If it's a medial meniscus, they would have pain on the inside of the knee, locking and catching refers to the inside. If it is the outside, they will have pain on the outside of the knee with locking or giving way and with

feeling something going wrong on the outer compartment of the knee, a period of definite history.

Q Isn't the best evidence of all the surgeon's observation when the man's knee is operated on and opened up?

A That's proof positive.

Q Thank you, Doctor. You claim this man had an injury to his lateral meniscus and then sometime between the time your father examined him and in 1974 ----

A I made no statement. The Judge asked me a hypothetical question. I said if you test it and the examination shows no lateral meniscus of the injury at the time, he could well have had an injury subsequent in six years to injure his lateral meniscus.

Q Doctor, I cite from the fact it was three years. Have you ever operated on somebody thinking they had a medial meniscus and finding out when you opened them up they had a lateral meniscus?

A No.

Q Good for you. Have you ever gone in, not knowing whether it was the lateral or medial or both?

A No.

Q You have not?

A No.

Q Have you reviewed the medical records in this case?

A I saw the reports months ago, yes.

Q Have you reviewed the hospital records in this case?
A Some of them from the Public Health Hospital.
Q I specifically refer to the consultation before the surgery that was performed on April 5th, 1974, have you looked at that?
A I got all -- Iremember he had a tear of the lateral meniscus. As I remember, an arthrogram was done.
THE COURT: It was done?
THE WITNESS: I think so. It's been a long time.
THE COURT: Do you want to show him that.
Q (By Mr. Matthews) I'd like to hand you the record, Doctor. Look at it and tell the jury if there was an arthrogram done.
THE COURT: Give the date you are talking about.
Q (By Mr. Matthews) The date of the surgery, Your Honor, is the 5th of April, 1974.
THE COURT: Wasn't there a consultation a few days previous?
MR. MATTHEWS: That's absolutely correct. That is on the 29th of March of 1974. And, the consultation report appears at page 10 of those records.
THE COURT: Isn't that the proper one you are looking at?
THE WITNESS: I am looking at one where I see

the resident or doctor states that he had both medial and joint line tenderness with clicking.

THE COURT: Is that the one you're referring to, Mr. Matthews?

MR. MATTHEWS: I don't have it now in front of me, Your Honor. I don't know what I'm looking for.

THE COURT: Show him what you're looking at.

MR. MATTHEWS: I don't want to interrupt you.

THE WITNESS: There is tenderness on the inner and outside of the joint which clicks. And, they went in on the outside. I might like to add, you don't have to take out a meniscus; you have to go in either medially or laterally. This operation seems to just have gone in laterally. Why they decided to go in laterally, I don't know.

Q (By Mr. Matthews) Maybe I can help you, Doctor.

A Do you know if there was an arthrogram done, it would help.

Q Well, I don't pretend to be omniscience, I find no arthrogram report in that record, Doctor.

A I am trying to find out why they went on the outside as opposed to the inside. There is no reason given. So, I can't tell you.

Q I want to talk to you, Doctor, about the pre-operative diagnosis and the consultant's report.

A Fine.

THE COURT: Ask him the question.

Q Doctor, you have told us you never go in not knowing whether it is going to be one or the other; is that correct?

A That's right.

Q Now, I am asking you if you would look at the consultant's report of March 29th, page 10 and tell the jury whether the pre-operative diagnosis, there was a possible medial and lateral meniscus tear of the left knee?

A That's correct.

Q Thank you.

THE COURT: Who prepared the report?

THE WITNESS: I don't know whether it was a house physicain or regular doctor. It's on a consultation sheet which is commonly given. I can't tell the signature. The patient was complaining of pain in the left knee. He now has swelling and pain on using stairs, climbing and on squatting. That was found on numerous episodes of locking. It is a very brief report. And, I can imagine one of the orthopedic staff wrote it up. Why they did what they did, I have no idea.

Q (By Mr. Matthews) Doctor, these events of buckling of the knee, when you're bending or locking ----

A That's very common with arthritis of the patella when

you get down.

Q I appreciate it if you would allow me to finish the question, Doctor.

Isn't that a common symptom with a medial meniscus as well as with a lateral meniscus?

A It is common with a medial meniscus and often can be with a lateral.

Q Then I would also ask you to look, Doctor, at the conference's report, can you tell us what an orthopedic conference is?

A The patient is presented to a group of doctors or two doctors and a decision as to course of action is made.

Q Would you read to the jury the note dated April 2nd, 1974, with regard to the consensus. Is that word consensus?

A Yes. Accepted in transfer from GU after counsel for left knee problem. See counsel sheet presented to conference. Consensus is that patient may have lateral tear; may have anterior tear at lateral meniscus. Plan exploratory lateral compartment; definite lateral compartment or something. No finding ----

Q If.

A If no finding, then explore medial.

Q What does concensus mean, Doctor?

A Opinion in general.

Q Does that ----

A Of the majority.

Q Of the majority?

A Yes.

Q That does imply there might have been some difference of opinion among most orthopedic surgeons, does it not?

A Yes.

Q So, they were going to try the lateral compartment first and then if they didn't find it pathologically there, they were going to go into the medial?

A Right.

Q Is that right?

A Yes.

MR. MATTHEWS: That's all I have, Doctor.

THE COURT: He was taken from one department to another?

THE WITNESS: He was evidently in for another condition. Then if you have an eye problem or bone problem, you call on another specialist to check on you and give an opinion.

MR. MOYLES: I have no redirect, Your Honor.

THE COURT: You are excused from further attendance at the trial, Doctor. We will now permit Mr. Matthews to call his witness.

MR. MATTHEWS: I would like to call Mr. Angell Evans.

THE COURT: You have one possible other witness?

MR. MATTHEWS: Yes, Your Honor.

THE COURT: What time did you say he was coming in, 3:30? I would be willing to put the report in if Mr. Moyles is agreeable.

Come over to the side one second.

(Whereupon a discussion out of the presence of the jury took place.)

THE COURT: I read the report. The difficulty with this report is he doesn't say very much except he believes the urinary retention and the myocardial infarction were related to the surgery. He doesn't say that it was caused by the surgery. That is the problem. There might be some relation to it, I don't know. I hate to keep this case open much longer. Why don't you admit, without admitting there was any merit to it, this is what he would say. I think you are in good shape.

MR. MOYLES: All right.

THE COURT: You will accept this solely as his report.

MR. MATTHEWS: It certainly is.

MR. MOYLES: I will accept that.

THE COURT: With the understanding that you are

not admitting the truth of it.

MR. MOYLES: That's right, Your Honor. If we could have one other agreement, that when you instruct the jury as to this piece of evidence, that I never had the opportunity to cross-examine the doctor.

THE COURT: All right.

(The following proceedings occurred in the presence of the jury.)

THE COURT: Ladies and gentlemen, I told you these fellows were probably friendly with each other as the doctors are. Mr. Matthews had a witness that was coming at 3:30. The case has gone a little faster than they had anticipated. But it is Dr. Cutler, who is an internist. He wrote a letter based upon the examination of the hospital records and not on the examination of the plaintiff.

Mr. Moyles has said, "It is perfectly all right to read this letter; but I am not agreeing that the facts stated in the letter are true. I am just saying on his direct examination, he would make this statement. I won't have an opportunity to cross-examine him; but I am just going to say that is his testimony."

I am going to ask Mr. Matthews if he would mind reading this letter to the jury.

MR. MATTHEWS: Thank you, Your Honor. The letter is dated June 7, 1974, addressed to myself, from Dr. Seymour S. Cutler .

"Dear Mr. Matthews:

"At your request I have reviewed the hospital records covering the admission of Mr. Julio Evans at the U.S. Public Health Service Hospital, Staten Island for the period of March 13, 1974 through May 10, 1974. The patient is a 56 year old male with a history of high blood pressure, who was admitted to the hospital March 13 for a GU work-up. He was cystoscoped and an enlarged prostate was noted. He was seen in consultation by the orthopedic department who recommended repair of the left lateral meniscus, which had been torn in an accident, several years before.

"He was found to be in satisfactory condition for major surgery, and on April 5, 1974, an arthrotomy and meniscectomy of the left knee was performed under general anesthesia. The doctor's progress notes for April 14, 1974 contained the following entry:

"'Noteworthy is that patient had persistent relative hypotension..."

MR. MATTHEWS: Your Honor, I may take the liberty of explaining that one expression.

THE COURT: Yes.

MR. MATTHEWS: Hypertension is high blood pressure.

"'..post-operative (BP 130-110/90-70) and that he began to experience chest pain accompanied by shortness of breath starting at 4 PM today.'

"Laboratory reports and EKG revealed acute anterior and inferior myocardial infarction. It was noted that following surgery the patient was unable to void and had to be catheterized. A Foley catheter was inserted on April 5, 1973, removed on the morning of April 9, and reinserted on the 9th. It was removed again on the 10th and reinserted until eventually he voided spontaneously.

"I believe that the urinary retention and the myocardial infarction were related to the surgery of April 5, 1974.

Very truly yours,

/s/ Seymour S. Cutler, M.D."

THE COURT: You men know what I'm going to instruct the jury.

MR. MATTHEWS: You have already advised us.

THE COURT: So you may proceed.

Ladies and gentlemen, I told both of these men that they could not use to exceed forty-five minutes to argue their case. That means they don't have to take forty-five minutes, but they cannot take more than forty-five minutes. Under the rule, you go first.

MR. MOYLES: I assume you are not entertaining any motion at this time.

THE COURT: I am taking those under advisement.

MR. MOYLES: Very well, Your Honor.

Ladies and gentlemen, we come now to a very important aspect of the case. I'm going to rerun through the witnesses with you and the documentation which had been marked in evidence; and, from all that, candidly, I hope you are going to find for me.

Mr. Matthews, of course, as he opened the case, under our procedure, has a right in closing the case. He will do, undoubtedly what he feels he should do so you will come in with a verdict for him.

We have to keep dates in mind in this case. They are so critical.

We have May 21st, 1968. Mr. Evans testified that on that date he was performing duties which the ship's officer directed him to perform. He was

working on the number 2 hatch. And, in doing so, he had to leap across an opening and fell and hit his knee.

Now, we remember we have not denied from the outset of this case that Mr. Evans hit his knee on May 21st, 1968. We have attempted to show you through cross-examination and the direct examination that the injury complained of now is not the result of that fall.

We then progress to the day of June 14th, 1968. On that date, Mr. Evans testified he had a second fall because his left knee buckled, again, while he was performing his duties aboard the ship; and that he hit his right knee.

As to the right knee, we have had no finding or testimony by any doctor, a finding of any type of permanent injury, temporary disability as to the right knee. But again, the ship has not denied that Mr. Evans had that fall on June 14th, nor do we admit that that fall was the result of his left knee buckling as he had testified because, as you will note from the testimony, Mr. Evans was by himself that day; and, it is his testimony which says, "On June 14th, my left knee buckled; I hit my right knee. The pain was so excruciating I lost consciousness." That is his

testimony.

Then we have a gap as far as the ship is concerned; and, it is not until 1970 that we are advised, over two years from the date of both of these incidents, that Mr. Evans is having problems with his knee. But, at that time he is working aboard another vessel. He is sailing aboard one of the Seatrain vessels. I think it was the Seatrain DELAWARE.

He advised the employer at that time he had contusion of the knee and prostatitis.

Mr. Evans subsequently sailed aboard another vessel right through 1973.

Now, these facts are undisputed. Mr. Evans admitted that. He went into great detail as to what the duties of a bosun are. He continued to sail. He even performed the duties he had to perform aboard the vessel right through 1973 when ordered to do so by the particular mate or master on this vessel.

Now he comes in and has an operation on April 5, 1974, with good doctors over in the U.S. Public Health Hospital who excises or removes his lateral meniscus.

We hit very heavy on that for reasons which I will go back into.

THE COURT: Mr. Moyles, could you meet with me

just a minute. I'm going to inform you on the form of verdict.

(Whereupon the following proceedings occurred out of the presence of the jury.)

THE COURT: I do this without the loss of wages. That claim is very nebulous. You haven't asked for anything specific. If you have a verdict, you don't want to contaminate the verdict. I will put down: We the jury find our verdict in favor of the plaintiff and assess his general damages at blank dollars and his special damages at blank dollars. This is going to be limited to his claim for loss of wages. If you subsequently determine he doesn't have any, I could take that out.

MR. MOYLES: This is going to be embodied in the jury instructions?

THE COURT: Yes.

MR. MOYLES: Fine.

THE COURT: I thought I would let you know.

(Whereupon the following proceedings took place in the presence of the jury.)

MR. MOYLES: We were talking about the lateral meniscus. I will try to get myself back again. Keep

the lateral meniscus in mind.

Now, let's go back. That operation was April 5, 1974. This man was seen by a number of doctors between 1968 and 1974, not doctors that are really employees of mine or Mr. Matthews or in the employ indirectly of the shipping company, but rather doctors at the U.S. Public Health Hospital. Remember neither of the two experts who testified here today, Dr. Rizzo or Dr. Mauer, saw this man until 1971.

We have the medical records from the U.S. Public Health Hospital of his continual complaining of knee problems. Now, are we to assume they are incompetent at the U.S. Public Health Hospital? They examined these knees between 1968 and 1971.

The only finding they have is that Dr. Rizzo testified he had never seen the document before today; that the findings in September, 1970, was that of osteoarthritis. There is a fancy medical term for it. I can't even pronounce it. That is what they found.

What plaintiff is really asking you to do is throw out the window all these other doctors that saw him; forget about them; they were really incompetent. They couldn't diagnose a lateral meniscus; and, he produces Dr. Mauer. Dr. Mauer is a credible witness.

He admitted to me on cross-examination that his diagnosis of a medial meniscus was wrong. And, he also admitted when questioned about arthritis that you could confuse a meniscus with arthritis.

He talked about the McMurray test. Quite candidly, I thought the doctor was a little bit evasive about the McMurray test.

Dr. Rizzo was candid and said the McMurray test has two aspects, the external rotation for the medial meniscus and the internal rotation for the lateral meniscus.

Just as we lawyers have tools, words of art, so do doctors have tools.

Now, I don't think any juror expects everybody who might have a meniscus problem or arthritis problem to have the knee opened up to determine every time whether they do or don't have a meniscus problem. So the doctors have tools to work with. From those tools, as human beings, these doctors derive conclusions and make prognosis.

The doctors in the Public Health Hospital, from 1968 right through 1970, found Mr. Evans' problem was nothing more than arthritis.

Dr. Rizzo, Sr., September 9, 1971, found an arthritic condition. From that point in time,

there is no finding of a meniscus problem.

In September, 1971, Dr. Mauer found a medial meniscus. Now, he has admitted that diagnosis was in error.

What did they take out on April 5, 1974? A lateral meniscus, not a medial meniscus.

We spent some time with Mr. Evans on his past medical history. Now, I didn't go into his past medical history to embarrass Mr. Evans. I have nothing personally to gain in embarrassing Mr. Evans. But we must bring out what we feel are important facts for you to consider in making your determination. And, we felt it was important to go into that medical history to show that he has had in the past, infectious diseases. Both Dr. Mauer acknowledged a thing called gonorrhea arthritis; and, Dr. Rizzo talked about that. As I say, our purpose in going into that was not to embarrass Mr. Evans, but to help and to show why there was this arthritic condition which is so consistently found from 1968 until 1971. It was there. It wasn't something that was hidden. It was there. The doctors found it. The doctors in the Public Health Service found it.

The Public Health Services are set up specifically to help seamen, as Mr. Matthews said.

They do not pay for the medical services over there. The taxpayers support that. It is a Government instituiton. We have them in San Juan. We have them in Baltimore; San Francisco and around the country for the purpose of helping our Merchant Marine. If they get injured or sick, they can be taken care of. So, we just can't assume these doctors over there are incompetent. They are dedicated. This service over there is equated with similar service in the military. None of these people could find a meniscus. I don't think there is anybody who dares testify that they give slip-shod care over there and just run people in and out. They examined this man.

It is unfortunate that April of this year he had a lateral meniscus operation. We don't dispute that fact. But, we are saying to you, as Dr. Rizzo testified, something must have happened after 1971 to cause that lateral meniscus, to tear that lateral meniscus. Dr. Rizzo didn't equivocate on this.

Now, just to talk about Dr. Rizzo a second. I think His Honor has fairly covered this point. But, yet, I have known Dr. Rizzo since I was twelve. I grew up with him in Brooklyn. But I can tell you this: Dr. Rizzo has never testified in any of the cases I have ever tried.

THE COURT: I think both sides are going far afield. I think we have covered Dr. Rizzo enough. They saw him. They can judge his credibility.

MR. MOYLES: Now, we have put into evidence the doctors who saw him who haven't testified here, such as the reports by the U.S. Public Health. We have put into evidence documents signed by Mr. Evans. And, those documents establish when he fell aboard the CALMAR vessel on July 11, 1968, which is subsequent to both of these falls, he was found fit. There is nothing on this document. You people are welcome to take them into the jury room and look at those and see whether it shows any problem as to the extremities. It has the word "Neg" which means negative. History of previous injury, tuberculosis or other illnesses, malaria - '41; T&A. This document says:

> "I hereby certify that I do not now have and have never had, to my knowledge, any physical disability, sickness or accidents except as noted on this medical examination report."

This was signed almost two months after the May 21st, 1968 incident and not quite a month after the June 14th, 1968 incident. I assume Mr. Evans signed this. He can read English and knew what he was doing when he signed it. This is for you to consider.

We get to the Seafarers' Union, which is his union, these are deemed exhibits in evidence, these cover a period of September 13, 1973, annual physical report signed by Julio Evans:

"Injuries: Skull, no; back, no; extremities, no. I certify that the above answers are true and correct. Signature Julio Evans."

That's September, 1973. Just last September, he certified to his union that he has no problem with extremities.

He was examined by his union and he was given a rating of one. A rating of one means he can go back to sea. He is physically fit to sail for another year.

All right, the first part of this is past physical where he gives the answer and certifies it. The second part is the physical examination by the doctor himself. There is nothing on here that shows any problem as to the extremities. There is nothing in here about any meniscus.

Certainly, the medical report of July 10, 1972, Mr. Evans certified to his union doctors, on past medical history, it says:

"Other illnesses, hypertension, prostatitis. Injuries: Skull, back, extremities, no, no, no.

Signed by Julio Evans.

Do we just disregard that statement? That's 1972.

1971, his answers to the extremities, back and skull are the same. On "Other illnesses, hypertension." Nothing on that report or the '71 report about a right knee or left knee meniscus.

February 2, 1970, past medical history. The only thing we see is hypertension again.

As we say, we know he had the operation on April 5th of this year. The last physical we have on this man is September, 1973, the physical with his union.

All right. What happened in between, we don't know. But, as Dr. Rizzo testified, in his opinion, somewhere between '71 and the day of that operation, something happened which would have caused the lateral meniscus to tear and result in the surgery.

Mr. Evans testified that he left the CALMAR vessel in August of 1968 to return to Puerto Rico because of the injury to his knee. We read him a question from his deposition taken before trial, September, 1971, which is certainly three years closer to 1968 than today; at that time, we asked the question: Why he returned to Puerto Rico. I am paraphrasing. I think you remember his testimony. He

stated he went back there for a vacation. And, he stated he got some paid vacation.

Now, it is not unusual in this industry for a seaman to finish up on a voyage and sign off the vessel, as he testified right up there. You sign off and sign on each voyage; you don't sign off like in the old sailing days where you sign on for five years. They sign on for a particular voyage at a starting point and terminate at another.

In the case of the CALMAR, Mr. Evans testified the voyage started on the east coast and would have terminated on the west coast. At that point he could leave the ship. Some people do it because they might want to take some time in California. But he liked to sign back on again; and, he signed back on and sailed back to the east coast. It is a completely separate trip. That is why he had another physical. It is not a continuous thing.

Then after he got back here in August of '68, the vessel finished up that particular voyage and he signed off the vessel. He elected to go back to Puerto Rico. As he testified in his deposition, he went on vacation; he simply went on vacation.

The history we have read to him before shows he signed on and off a lot of other vessels

during this 6-year period, the Seatrain DELAWARE, the GATEWAY CITY; the NEW JERSEY; the JACKSONVILLE and a number of other vessels. So, he kept continuously employed the period of time.

We, unfortunately, in our industry are having a problem; when you sign off an American vessel, it is not always easy to get back on. The problem now is with competition between American Marine versus the foreign marine. We don't have as many jobs, unfortunately. So, when you sign off, it is not easy to get back on. But, you get paid for when you work. You contribute to your pension and you build up some vacation pay. People sign off, take time off and go to the union and make application to go back on when a vessel is available. They get vessels on seniority basis. That's all Mr. Evans did this whole period of time. He sailed, signed off, took vacations and during this whole period of time, there was nothing which gave rise to any meniscus problem until some unfortunate unforeseen event happened to him after 1971. Where it happened, how it happened, we don't know. We don't have to prove that other event happened. It is Mr. Matthews' responsibility.

The Judge will instruct you what we mean by the preponderance of the evidence. It is

Mr. Matthews' responsibility to prove to you that that fall on May 28th, 1968, caused this lateral meniscus. And, we say to you, there is no way he has proved that at this trial today.

When you look at the medical reports and you look at the testimony, you will evaluate those medical reports and evaluate that testimony, there is no way you can find that that fall gave rise to a lateral meniscus tear, which was excised out of his knee on April 5, 1974.

We are confident you will evaluate the testimony, the exhibits that are before you, recasting your thinking about what was said here today and what we tried to put before you and what we did put before you, that you cannot come in with a verdict for the plaintiff in this case.

Thank you, Your Honor.

THE COURT: Mr. Matthews.

MR. MATTHEWS: Ladies and gentlemen, it's been a short trial. As His Honor said, shorter than I expected. I want you to know something, the practice of law, and particularly the practice of the trial law requires a certain discipline and self-restraint. Lawyers, and myself particularly, find it difficult. But in a summation, attorneys are allowed to comment